SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 181.

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE, AND LEONARD D. DRAPER, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF PAINE, WEBBER & COMPANY, APPELLANTS,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a In the Supreme Court of the Territory of Arizona.

No. 1149.

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business Under the Name and Style of Paine, Webber & Company, Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Defendant; JAMES B. RILEY, Intervenor, Appellees.

Jos. H. Kibbey Esq., and Walter Bennett, Esq. (of the law firm of Kibbey, Bennett & Bennett), attorneys for Appellants.
John B. Wright, Esq., attorney for Appellees.

On Appeal from the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

Be it remembered that on to-wit: the third day of January, 1910, came the appellants in the above entitled cause, by their attorneys, and filed in the Clerk's office of said Supreme Court, in said entitled cause a certain Judgment Roll, in words and figures fol-
1 lowing, excepting a certain Petition in Intervention of Jas. Riley, which is here omitted by direction of attorneys for appellants:

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business Under the Name and Style of Paine, Webber & Company, Plaintiffs,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Defendants.

Plaintiffs for their complaint allege:

I.

That the plaintiff, William A. Paine, is a resident of Boston, Massachusetts; that the plaintiff, Herbert L. Foster, is a resident of Boston, in the Commonwealth of Massachusetts; that the
2 plaintiff, Thomas S. Dee, is a resident of Brookline, in the Commonwealth of Massachusetts, and that the plaintiff, Leonard D. Draper, is a resident of Wayland, in the Commonwealth of Massachusetts, and that the said plaintiffs are a co-partnership doing business under the firm name and style of Paine, Webber & Company.

That the defendant, Copper Belle Mining Company of Arizona, is a corporation organized and existing under the laws of the Territory of Arizona, and having its principal office for the transaction of business in the City of Tucson, in the County of Pima, and Territory of Arizona, and that Frank H. Hereford of Tucson, Arizona,

is the duly appointed agent of the said defendant company upon whom process may be served, and is also a director in said company.

II.

That on July 22nd, 1907, at the City of New York, in the State of New York, the said defendant Copper Belle Mining Company of Arizona, for value received, executed and delivered to Duparquet, Huot & Moneuse Company its certain promissory note in writing, wherein and whereby the said defendant Copper Belle Mining Company of Arizona promised to pay to the said Duparquet, Huot & Moneuse Company Two Hundred and Sixty-five Thousand, Four Hundred and Sixteen and 72-100 ($265,416.72) Dollars
3 at 43 and 45 Wooster Street in the City of New York, on demand after date with interest thereon at the rate of 6 per cent per annum, which said promissory note is in the words and figures following, viz.:

$265,416.72-100. NEW YORK, *July 22nd*, 1907.

On Demand after date we promise to pay to the order of Duparquet, Huot & Moneuse Co., Two hundred and Sixty-five thousand four hundred & Sixteen 72-100 Dollars at 43 & 45 Wooster St., New York City.

COPPER BELLE MINING CO. OF ARIZONA.
PETER QUINN, *Presdt.*
E. J. MONEUSE, *Trea. and Secty.*

Value received.
Interest at 6% P. A.
No. —. Due —.

(Endorsed on back of note:) "Duparquet, Huot and Moneuse Co. Louis H. Huot, Treas."
"Presented and dishonored."

III.

That thereafter and before the said note became due and payable the said Duparquet, Huot & Moneuse Company, for value received, endorsed and delivered the said promissory note to the plaintiffs herein, and that the said plaintiffs are now the holders and owners of said note, and that the said note has not been paid, nor any part thereof.

4 IV.

That on the 30th day of July, 1907, the said note was presented to the defendant, Copper Belle Mining Company of Arizona, for acceptance and payment, and that thereupon demand for the payment of said note was made upon the said Copper Belle Mining Company of Arizona, defendant herein, at its office in the City of New York, in the State of New York, and that payment on said

note was then and there refused by the said Copper Belle Mining Company of Arizona, and that the said note has not been paid, nor any part thereof.

V.

Wherefore, these plaintiffs demand judgment against the defendant, Copper Belle Mining Company of Arizona, for the sum of Two Hundred and Sixty-five Thousand Four Hundred and Sixteen and 72-100 ($265,416.72) Dollars, with interest thereon at the rate of 6 per cent per annum from July 22nd, 1907, together with their costs and disbursements herein.

WALTER BENNETT,
Attorney for Plaintiffs.

Filed Dec. 4th, 1907.

(Title of Court and Cause.)

Action brought in the District Court of the First Judicial District of the Territory of Arizona, in and for the County of
5 Pima, and the complaint filed in said County of Pima in the office of the Clerk of said District Court.

In the Name of the Territory of Arizona to Copper Belle Mining Company of Arizona, defendant, Greeting:

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff in the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, and answer the Complaint therein filed with the Cerk of this said Court, at Tucson, in said County, within twenty days after the service upon you of this Summons, if served in this said County, or in all other cases within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the District Court of the First Judicial District, Territory of Arizona, in and for the County of Pima, this 4th day of December, 1907.

[SEAL.] ALLAN B. JAYNES,
Clerk of said District Court,
By LORAINE McMILLEN, *Deputy.*

SHERIFF'S OFFICE,
County of Pima, ss:

I hereby certify that I received the within Summons on
6 the 4th day of December, A. D. 1907, and personally served the same at the hour of 10 a. m. on the 6th day of December, A. D. 1907, on the within named Copper Belle Mining Company of Arizona, being the defendant named in said Summons, by delivering to Frank H. Hereford, Statutory Agent of Copper Belle Mining Company of Arizona, at Tucson, Arizona, County of Pima, a copy

of said Summons, to which was attached a true copy of the Complaint mentioned in said Summons.

Dated this 6th day of December, A. D. 1907.

Fees, Service, $1.50.
Travel, miles, $0.30.
Total, $1.80.

NABOR PACHECO, *Sheriff*,
By H. MEYER,
Deputy Sheriff.

(Title of Court and Cause.)

Petition for Intervention.

Comes now James B. Riley, for himself and for all other stockholders of the defendant corporation who care to participate herein, and asks leave of the Court to intervene in the above-entitled suit, and alleges that he has an interest in the subject matter of the above-
7 entitled suit, which can be affected by the judgment; that he is a heavy stockholder in defendant corporation; that the note sued on by the plaintiff in the said case was given without any consideration whatsoever, and was given for the purpose of defrauding this intervenor, and many other stockholders of the defendant corporation out of their rights therein; that it is the intention of the said company to allow said suit to go by default, and allow the plaintiff to take judgment therein, and obtain title to the properties of the defendant corporation, which properties consist of very valuable mining claims in Cochise county, Arizona; the plaintiffs have a lease upon the said properties and know the value thereof, and that the entire proceedings in the giving of the alleged note by the defendant corporation was for the purpose of defrauding the minority stockholders of the said corporation from their rights; that if the Court grants this petition, your intervenor will set up in detail the facts which show the fraud on the part of the plaintiff and defendant in the above-entitled suit, and that your intervenor, by permission of this Court, will file herein pleadings which shall conform to the requirements of pleadings on the part of plaintiff and defendant respectively.

Wherefore, your petitioner prays that an order of Court be made herein allowing your petitioner twenty days in which to prepare
8 and file his pleadings and intervention herein, and that pending such twenty days, the plaintiff be enjoined from taking any default in the above-entitled action.

JOHN B. WRIGHT,
Attorney for Intervenor.

Filed Dec. 26th 1907.

(Title of Court and Cause.)

Default.

In this action the defendant, Copper Belle Mining Company of Arizona, having been regularly served with process and having failed to appear and answer the Plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said defendant, Copper Belle Mining Company of Arizona, in the premises is hereby duly entered according to law.

Given under my hand and the seal of said District Court at Tucson this 30th day of December, A. D. 1907.

[SEAL.] ALLAN B. JAYNES, *Clerk*,
By LORAINE McMILLEN,
Deputy Clerk.

(Title of Court and Cause.)

Judgment.

This cause coming on this day to be heard, the plaintiffs appearing by Walter Bennett, their attorney, and there being no appear-
9 ance by the defendant, and it appearing to the Court that the summons in this action, together with a true copy of the complaint herein, was personally served on the said defendant, the Copper Belle Mining Company of Arizona, at the city of Tucson, Arizona, on the 6th day of December, 1907, and that more than twenty days have elapsed since the service of said summons, and that the default of the defendant, the Copper Belle Mining Company of Arizona, for not answering plaintiffs' complaint has been duly entered herein and the Court having heard the testimony of witnesses sworn and examined in open court, and having examined the documentary evidence offered on behalf of the plaintiffs, and being fully advised in the premises, doth find that there is due from the defendant, the Copper Belle Mining Company of Arizona, to the plaintiffs herein upon the promissory note, copy of which is set forth in the complaint, the sum of Two Hundred and Sixty-five Thousand, Four Hundred and Sixteen and 70-100 Dollars ($265,416.70), with interest thereon at the rate of six (6) per cent per annum from the 30th day of July, 1907, amounting in all to the sum of Two Hundred and Seventy-two Thousand Two Hundred and Twenty-nine and 4-100 Dollars ($272,229.04).

It is therefore ordered, adjudged and decreed, that the plaintiffs, William A. Paine, Herbert I. Foster, Thomas S. Dee and
10 Leonard D. Draper, co-partners doing business under the name and style of Paine, Webber & Company, do have and recover of and from the defendant, the Copper Belle Mining Company of Arizona, the said sum of Two Hundred and Seventy-two Thousand, Two Hundred and Twenty-nine and 4-100 Dollars

($272,229.04), together with their costs and disbursements herein taxed at $12.20.

Dated this 4th day of January, A. D. 1898.

JOHN CAMPBELL, *Judge.*

Filed Jan'y 4th 1908.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Allan B. Jaynes, Clerk of the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, do hereby certify that the foregoing papers comprise a full, true and correct Judgment Roll, as appears of record, in the case of William A. Paine, et al., plaintiffs, vs. Copper Belle Mining Company of Arizona, defendant, No. 4,264.

Witness my hand and seal of said Court, this 4th day of January, A. D. 1898.

ALLAN B. JAYNES, *Clerk,*
By LORAINE McMILLEN, *Deputy.*

(Title of Court and Cause.)

Motion.

Comes now James B. Riley, and moves the Court to set aside
11 and vacate the judgment heretofore rendered herein, allow him to intervene and defend the above-entitled suit for the defendant corporation, and to re-hear his motion for intervention, and to grant a new trial herein; and, as a part of this motion, he submits his own sworn Plea in Intervention and Answer for the defendant to the plaintiff's complaint, and the affidavit of John B. Wright, his attorney, which answer and affidavit are hereto attached and made a part of this motion.

JOHN B. WRIGHT,
Attorney for James B. Riley.

Filed Feby. 4-1908.

(Title of Court and Cause.)

Affidavit.

TERRITORY OF ARIZONA,
County of Pima, ss:

John B. Wright, being first duly sworn, on his oath deposes and says that on the evening of December 24, A. D. 1907, he received a telegram from the City of New York, as follows:

"Suit filed recently on note. We think Paine versus Copper Belle Mining Company, district court, Tucson. Minority stockholders wish to intervene in defense on account fraud. Use name James B. Riley. Will you take immediate temporary steps to protect
12 our interests, until we write you facts? Wire."

JAMES B. RILEY, *New York.*

That thereafter and on December 26, 1907, affiant wired to the said James B. Riley to the effect that he would do all that was pos-

sible to protect his interests; that the said 26th day of December, 1907, was the last day on which the defendant corporation could answer the said complaint, as thereafter they would be in default, the summons in said action having been served upon the statutory agent of the defendant corporation on December 6, 1907; that affiant had no knowledge of the facts referred to in the said telegram, and was unable at said time to present to the said Court any definite facts, and that he therefore filed a petition with the said Court to allow the said James B. Riley to intervene in the said action on the ground of fraud; that thereafter and on December 27, 1907, the said James B. Riley wrote a letter to affiant, in which the facts as alleged in the answer of James B. Riley, which is filed herein, were given; that said letter was received by affiant in due course; that thereupon the affiant, with all due diligence, prepared a pleading, setting forth all of the facts as stated in the letter aforesaid, and mailed it to the said Riley at New York City, for verification; that thereafter and on the
4th day of January, 1908, and before affiant could get the
13 pleadings returned from New York, affiant was notified to
appear in the District Court, where he found that the attorneys for the plaintiff were requesting the Court to deny the application of James B. Riley to intervene, and for judgment by default against the defendant corporation; that thereupon, the Court did deny the petition of James B. Riley to intervene, and did grant judgment in favor of the plaintiffs and against the defendant company, for the amount prayed for; that affiant thereupon wrote to the said James B. Riley in New York, requesting him to use his best efforts through the stockholders and directors of defendant corporation, to have them take action towards setting aside the said judgment, and as affiant is informed and verily believes, the said James B. Riley did use his utmost endeavor to get the stockholders and directors of the said corporation to take action looking towards the setting aside of the said judgment, but without success; that on to-wit, the 4th day of February, 1908, affiant for the first time received the pleadings as filed herewith from the said James B. Riley; that the said James B. Riley and affiant have used the utmost diligence in preparing the said papers, and in taking action herein at the earliest date possible; that this affidavit is made for the purpose of influencing the discretion of the Court in setting aside and vacating the judgment rendered as aforesaid and to the end that justice may be
done James B. Riley and other stockholders of the defendant
14 corporation. That it was impossible to endeavor to have the
stockholders and directors of defendant corporation take action, and to have the pleadings in form to base a motion for a new trial within five days after the judgment was rendered therein.

JOHN B. WRIGHT.

Subscribed and sworn to before me on this the 4th day of February, A. D. 1908.

My commission will expire December 5, 1911.

[SEAL.] LENNA H. BURGES,
Notary Public.

Filed Feb'y 4th 1908.

(Title of Court and Cause.)

Comes now the plaintiffs, William A. Paine, Herbert I. Foster, Thomas S. Dee and Leonard D. Draper, and resists the motion of James B. Riley that the Court vacate the judgment in favor of plaintiffs, rendered by this Court in this cause, and to allow him to intervene and defend the above entitled suit and to grant a new trial thereof on the following grounds:

I.

That no fraud or improper conduct on the part of the plaintiffs or their attorneys, or any error on the part of the Court in
15 the obtaining of said judgment, is shown in said motion, or in any of the papers filed in support thereof.

II.

That an application and motion for leave to intervene was made by the said James B. Riley in this cause prior to the rendition of judgment herein, which application after due argument and consideration by the Court was denied.

III.

That the only purpose as set forth in the moving papers for such motion to vacate the judgment, is that the said James B. Riley may be permitted to intervene and defend said action, and that such motion for leave to intervene comes too late after the trial of the cause and judgment entered therein.

IV.

That the papers containing said motion does not show that the moving party, James B. Riley, has any interests in the subject matter of the suit which can be affected by the judgment.

V.

That the facts set forth in the answer which the said James
16 B. Riley asks leave to file in said cause in case the said judgment shall be vacated and he be allowed to intervene, do not show a meritorious defense to said action.

WALTER BENNETT,
Attorney for Plaintiffs.

(Title of Court and Cause.)

Amended Answer.

Comes now James B. Riley, the proposed intervenor herein, and alleges as follows:

I.

That he is a stockholder of the defendant corporation and has been such since its organization, owning about ten thousand shares of its stock; that in the month of December, 1907, a day or two before the judgment herein was rendered, this intervenor, by accident, as in hereinafter more fully set forth, discovered that this action had been brought and immediately telegraphed from the City of New York, State of New York, where he was then and now is, and now resides, to his attorney herein, John B. Wright, of Tucson, Arizona, to immediately apply to this Court for leave for himself and George E. Crawford, another stockholder, with the latter's
17 authority, and all other stockholders who might wish to join, to intervene as defendants in this action and file and serve an answer to the complaint herein; that his said attorney thereupon immediately and before the rendition of judgment herein, applied for such leave to this Court.

That said motion was opposed by the attorneys for the plaintiffs herein and said motion was denied, because the showing was incomplete, the said intervenors not having had time to send proper papers and affidavits to their said attorney, as it takes about five days for mail to go from New York to Tucson, Arizona; that upon refusing said leave to intervene, the Court immediately, upon application of the attorney for the plaintiffs, and over the opposition of this intervenor's attorney, granted judgment by default against the defendant corporation herein. That said defendant corporation and this defendant in its behalf as a stockholder as aforesaid have a meritorious defense to the cause of action set up in the complaint herein as this defendant and intervenor is informed by his counsel and verily believes, after a full statement of the case made by this intervenor to his said counsel. That this intervenor makes this defense and files this answer for himself and as a stockholder of the defendant corporation and for and on account of all other stockholders of said defendant corporation who desire to come in and defend and contribute to the expense of the defense herein.

18 II.

This defendant and intervenor denies the allegations in the complaint that the defendant corporation for value received executed to Duparquet, Huot & Moneuse Co. the promissory note described in the complaint, and that the said Duparquet, Huot & Moneuse Co., for value received, endorsed and delivered said note before it became due to the plaintiffs herein.

For further defense herein this intervenor alleges:

III.

That on and prior to February 13th, A. D. 1904, the Copper Belle Mining Company was a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, which corporation shall hereinafter be termed the West Virginia corporation, and said West Virginia corporation was doing business in Cochise County, Territory of Arizona, and was the owner of valuable mines, mining claims, mill sites and mining machinery at and in the vicinity of the Town of Gleeson in said County of Cochise, Territory of Arizona, and which property was of the reasonable value of one million dollars.

IV.

That on June 4th, 1903, and for some time prior thereto,
19 the intervenor and defendant herein, James B. Riley, was the President and a member of the Board of Directors of the said West Virginia corporation. That on said last mentioned date, to-wit, June 4th, 1903, one Balthazard Brunner and one J. Adam Brunner were large stockholders in said West Virginia corporation. That said intervenor and defendant, Riley and one George E. Crawford, who was the Secretary and Treasurer and a member of the Board of Directors of said West Virginia corporation, together with said Balthazard Brunner and J. Adam Brunner, and their friends, who were stockholders in said company, owned and controlled a majority of the capital stock of said West Virginia corporation.

V.

That on said 4th day of June, 1903, said West Virginia corporation was indebted to divers and sundry persons in the sum of forty thousand dollars, and by reason thereof the said West Virginia corporation had been declared a bankrupt in the District Court of the First Judicial District of the Territory of Arizona, and bankruptcy proceedings were being had in reference thereto; that the said corporation had no means wherewith to pay off its indebtedness aforesaid or to continue in the prosecution of mining and development work upon its said claims.

20 VI.

That owing to the embarrassed financial condition of said West Virginia corporation, as set forth in paragraph V aforesaid, the intervenor and defendant, Riley, and the said Crawford and the said Balthazard Brunner and J. Adam Brunner entered into a contract in writing with one Elie J. Moneuse, who was also a stockholder in said corporation, wherein and whereby the said Riley, Crawford, Balthazard Brunner and J. Adam Brunner agreed, among other things, to take such proceedings that there would be in the treasury of the said corporation 50 per cent of the total capital stock of the said West Virginia corporation, and that the said corporation should

issued said 50 per cent of said total capital stock to the said Moneuse and in consideration thereof the said Moneuse was to pay off all the indebtedness of the said corporation and supply moneys sufficient to work and develop the mining claims of said West Virginia corporation for the period of three years from the said 4th day of June, 1903. That a true copy of said contract is hereto annexed and made a part thereof, and marked "Exhibit A."

VII.

That after the execution of the contract attached hereto and
21 marked "Exhibit A," each and every of the conditions to be performed by the said parties to the said contract were performed by them in manner and form as set forth in the said contract, that is to say: That for and in consideration of the premises set forth in the said contract, the said Moneuse, party of the third part therein, did, on or before June 30th, 1903, provide and supply a sufficient sum of money to pay off and discharge all of the just debts of said West Virginia corporation which were due and owing by the said corporation, and that, in addition thereto he did, as required from time to time, provide and supply sufficient funds to enable the said West Virginia corporation and its successor, the defendant corporation, to work and operate the claims and mines which had theretofore been operated by it, and did procure the bankruptcy and other legal proceedings against the said company to be dismissed and terminated, and said company to be restored to the title and possession of its property free and clear, except as to alleged mortgages made to Gleeson and Costello. That before providing and supplying the funds aforesaid, the said Riley and Crawford, who were the parties of the first part in said contract, and the said Balthazard Brunner and J. Adam Brunner, who were the parties of the second part in the said contract, complied in all respects and carried out all the terms and conditions of the said contract to be performed by them according to its terms; that is to say, the parties of
22 the first part in said contract procured the officers and directors of the said West Virginia corporation to permit a complete examination of the books of said corporation to be made by a reputable accountant selected by the said Moneuse, at the office of the said company in New York City, and that said accounting was had in the office of said company, and that they carried out each and all of the provisions contained in the second paragraph of said contract. That upon the receipt of the report of the said accountant, the parties to the said contract returned to the treasury of the said West Virginia corporation all shares of its capital stock which were found, as provided in said contract, to be owing by them or any of them to the said corporation, or which stock had been issued to them without any good and sufficient legal consideration, and that the said first and second parties to the said contract returned to the treasury of the said West Virginia corporation shares of the stock thereof which equaled, at the purchase price paid therefor, the sums of money found by said accountant to be owing by them to the said company, with interest to the date of the said report; that there was in the

treasury of the said West Virginia corporation and unissued or owned by it immediately after the report of the said accountant had been made, including the stock that had been returned under the third paragraph of the said contract, 50 per cent of the total
28 authorized capital stock of said corporation, and that the said parties of the first and second part transferred out of and in proportion to their respective individual holdings, to the said corporation, sufficient capital stock thereof which made up and completed the said 50 per cent. That the said parties of the first part to said contract, immediately after the execution of said contract, procured the resignation of the then President and Treasurer and Board of Directors of said company, and that a stockholders' meeting of said company was called for the purpose of electing a new Board of Directors and filling the vacancies caused by the resignations of the said officers; that the said corporation issued and delivered to the said Moneuse 50 per cent of the total authorized capital stock of said company, less the amount of the holdings which the said Moneuse had at that time, which stock was so issued to him in consideration of the aforesaid payments made and to be made by the said Moneuse by virtue of the said contract; that under and by virtue of the terms of the said contract the said Riley and the said Crawford nominated one of the new Board of Directors of the said West Virginia corporation; that the said Balthazard Brunner and J. Adam Brunner nominated another of the Directors, and that the said Moneuse nominated three Directors of the new Board of Directors, and that the said parties voted all their stock in favor of the nominees for the
24 new Board of Directors as aforesaid, and said nominees were thereupon elected as Directors; that the said Moneuse then nominated a President and Treasurer of his own choice for said company, and all the parties to the said contract procured the election of said nominees. That there was retained in office George E. Crawford as Secretary of the said company, and James B. Riley as a Director and Vice President thereof, for the term of one year subsequent to the date of the said contract, and that thereafter such resolutions as were necessary or proper to carry out and have performed on the part of the parties to the said contract or on the part of the said West Virginia corporation the terms and provisions of said agreement, were submitted to and adopted by the new Board of Directors and by the stockholders of the said West Virginia corporation at meetings of the said Directors and stockholders which were called forthwith and each of the parties to the said contract gave his best efforts, aid and endeavors, and his votes, to procure the adoption of the said resolutions and the same were adopted and all of the provisions of said agreement were ratified and adopted by said West Virginia corporation by votes of its stockholders and Board of Directors.

VIII.

That after each and all of the things aforesaid had been done and performed in conformity with the terms of the said
25 contract, the said Moneuse delivered to the parties of the first part and the parties of the second part therein a consent to

the discontinuance of an action then pending in the Supreme Court of the County of New York, and which is referred to in said contract, and the said Moneuse delivered to the said parties of the first part and the parties of the second part in said contract a consent to vacate the injunction order which had been entered in said action; and after the number of shares to be transferred to the treasury of said West Virginia corporation by the parties of the first part and the parties of the second part in said contract, had been ascertained as prescribed in said contract, a stipulation was signed by the attorneys for the parties to said contract, being the parties to said action in the Supreme Court, County of New York, and an order was entered thereon providing that the injunction entered in said action should be vacated as to all of the parties to said action, as far as it referred to the stock of the said West Virginia corporation deposited with the Knickerbocker Trust Company under an agreement between the parties of the first part and the parties of the second part in said contract, and John Gleeson, by his releasee, the said West Virginia corporation, and the said Knickerbocker Trust Company thereupon released and cancelled 7,700 shares of stock which were then outstanding in the name of the said Gleeson,
26 and also the shares of stock required in the said contract, and the said shares were transferred to the treasury of the said West Virginia corporation and the parties of the first part and parties of the second part in said contract entered into possession of the remaining shares so deposited as they were severally entitled to it, and the said parties of the first part and parties of the second part to said contract executed such consent or order upon the said Knickerbocker Trust Company as was required for the purpose of such transfers.

IX.

That the report of the accountant provided for in said contract was submitted to Henry J. Mayer, James F. Mack and Joseph N. Goldbacher, who thereupon passed upon and decided the number of shares to be transferred to the treasury of said West Virginia corporation by the parties to said contract and as specified in said contract, and said parties transferred said shares of stock accordingly.

X.

That on the 13th day of February, 1904, the defendant corporation was organized under the laws of the Territory of Arizona, with capital stock of $1,000,000, divided into 200,000 shares of the par value of five dollars per share. That thereafter, and on
27 January 16, 1906, the defendant corporation amended its articles of incorporation by making the capital stock thereof $1,500,000 divided into 300,000 shares of the par value of five dollars per share, and that pursuant to a resolution of the stockholders of the said West Virginia corporation and pursuant to a vote of its Board of Directors, the said stockholders of the said West Virginia corporation transferred all their shares of stock in said

corporation and said West Virginia corporation transferred all its assets to the defendant corporation, and in consideration of such transfers, the defendant corporation issued to the aforesaid stockholders respectively shares of stock equal to the number of shares of stock which each stockholder had held in said West Virginia corporation and had transferred as aforesaid. That the intervenor and defendant herein thereby became and is the owner of about ten thousand shares of the capital stock of the defendant corporation. That the said Moneuse, by reason of said transfer became the owner of about one hundred thousand shares of stock of the defendant corporation, and, through his connection with other stockholders, relatives and friends of his, controlled and managed a majority of the capital stock of the defendant corporation.

XI.

That said Moneuse, having control of a majority of the stock of the West Virginia corporation, conspired and confederated
28 with the directors and officers of said corporation to defraud the said West Virginia corporation and the minority stockholders thereof, including this intervenor and defendant, out of the property and assets of the said corporation, and to cause this property to be sold under cover of judgments and executions to be obtained upon a pretended indebtedness claimed by the said Moneuse to be owing to him by the said West Virginia corporation, the said Moneuse claiming and pretending that the amounts of money which he had paid out under and by virtue of the contract "Exhibit A," above mentioned, were not paid by him as the purchase price for the shares of stock in the West Virginia corporation, transferred to him under the provisions of said contract, but were simply loans and advances made by him to said West Virginia corporation which were to be paid back to him with interest. To that intent and purpose, he having control of a majority of the shares of stock of said West Virginia corporation, and the officers and Board of Directors of said West Virginia corporation having been nominated and elected at his instance, and being subservient to his directions, he caused a resolution to be passed at a meeting of the said stockholders, directing that the defendant corporation should, as a condition of the transfers of said shares of stock and assets to it as aforesaid, assume the said pretended indebtedness claimed to be owing to the said Moneuse; but the minority stockholders,
29 including this intervenor and defendant, having objected to said resolution, the same was thereafter rescinded at a meeting of the said stockholders, the said Elie J. Moneuse and his friends voting in favor of such recission, and the said Elie J. Moneuse stating in open meeting that he withdrew his claim to the return of any moneys paid out by him under the provisions of said contract.

XII.

That after the said Moneuse had obtained control as aforesaid of the defendant corporation, he caused a set of by-laws to be adopted by it wherein and whereby a stockholders' meeting could be called

at any time by advertisement in some newspaper, and no personal notice whatsoever, of a stockholders' meeting need be given by mail or otherwise, to the stockholders of the said defendant corporation; that the said Moneuse, immediately upon getting control of the said corporation, placed a man by the name of Peter Quinn as President of the said defendant corporation and had him elected as such, and had himself elected as Secretary and Treasurer of said defendant corporation and others of his friends elected as directors; that he thereupon called numerous stockholders' meeting without giving any proper notice to the stockholders' whatsoever, and without giving any notice, save and except the advertised notice aforesaid. That at one of the meetings of the said stockholders, held in the City of New York on the 7th day of May, 1906, there were but five stockholders of said defendant corporation present, out of 180 stockholders. That the said five stockholders present at the meeting aforesaid were the said Peter Quinn, President; the said E. J. Moneuse, Treasurer; one Huot, who was a stockholder and a friend of the said Moneuse, and two stockholders, Casey and Sturm, who were employees of the said Moneuse. That the rest of the stockholders of the said defendant corporation had no knowledge or notice of the said meeting or meetings. That at said stockholders' meetings the said Moneuse had such resolutions passed and votes carried as he desired.

XIII.

That notwithstanding the renunciation of his claim above mentioned, the said Moneuse continued to falsely pretend and still falsely pretends that the defendant corporation is indebted to him in a large sum of money for amounts claimed to have been paid out by him under and by virtue of the provisions of the contract, "Exhibit A," aforesaid. That although statements of the indebtedness so claimed to be due to him have been frequently demanded of him by the stockholders of the defendant corporation, he has never given them any such statement.

XIV.

That on or about the 22nd day of July, 1907, the said Elie J. Moneuse and the said Peter Quinn, in pursuance of the fraudulent conspiracy and combination above mentioned, without any notice to the stockholders of the defendant corporation, and without their knowledge or consent, executed a promissory note bearing said date, in the sum of $265,416.70, payable on demand to the order of Duparquet, Huot & Moneuse Company, the said note being signed in the name of the defendant corporation by Elie J. Moneuse, as its Treasurer and Secretary and by Peter Quinn as President, and thereupon they delivered said note to the payee mentioned therein, and the said Duparquet, Huot & Moneuse Co. transferred said note to the plaintiffs, Paine, Webber & Co.

XV.

That the payee in said note, Duparquet, Huot & Moneuse Company, is a corporation, of which the said Elie J. Moneuse is President, and that the said promissory note was given without any consideration passing to the defendant corporation from the said Elie J. Moneuse or from the said Duparquet, Huot & Moneuse Company, and it was made and delivered in fraud of the defendant corporation and of the rights of the stockholders. That the
32 said Duparquet, Huot & Moneuse Company and the said Paine, Webber & Co. were parties to and participated in the said fraudulent conspiracy above mentioned and had full knowledge of the fact that said note was without consideration and was fraudulent and that the defendant corporation is not and was not indebted to the said Elie J. Moneuse or the Duparquet, Huot & Moneuse Company, in any sum of money whatsoever.

XVI.

That in the month of December, 1907, in pursuance of said fraudulent conspiracy and for the purpose of obtaining judgment upon said note and causing the property of the defendant corporation to be sold under execution to be issued thereunder, the said Paine, Webber & Co. brought this action upon said note in this Court, without any notice to the stockholders of the defendant corporation other than Elie J. Moneuse and his co-conspirators; that this intervenor and defendant, by accident, and through seeing a notice of the action in a mining paper published in Boston, Massachusetts, discovered that such action had been brought and thereupon immediately endeavored to intervene as a party defendant in said action, for the purpose of defending the same on behalf of the defendant corporation, and of himself and other stockholders similarly situated
33 with himself. That this Court thereupon dismissed his plea of intervention, upon the ground that he was not entitled to any such remedy. That the President and directors of the defendant corporation, in pursuance of the fraudulent conspiracy aforesaid, failed and refused to put in any answer or defense to the complaint in said action, but suffered default, and judgment by default for the amount of $272,229.04 was thereupon entered in said action against the defendant corporation. That the said plaintiffs in said action, Paine, Webber & Co., aided and abetted by the said Elie J. Moneuse and his co-conspirators, intend, as this intervenor and defendant is informed and believes, to cause an execution to be issued upon said judgment and to cause the property and assets of the defendant corporation to be sold under said execution, for the purpose of sacrificing the same and defrauding and depriving the stockholders of said corporation of the same.

XVII.

That after the rendition of the judgment above mentioned, in favor of Paine, Webber & Co. against the defendant corporation, this intervenor and defendant and other stockholders, caused to be served

upon each of the officers and directors of the defendant corporation a demand in writing directed to said officers and to the
34 Board of Directors of the defendant corporation, that they should cause such action or actions to be brought, or proceeding or proceedings to be taken on behalf of the defendant corporation, as would enable said corporation to procure the vacating and setting aside of said judgment, and as would enable it to set up and prosecute a defense against the establishment and enforcement of said promissory note above mentioned, said demand fully describing the said judgment, and stating the nature of the transaction which led up thereto.

XVIII.

That at a duly called special meeting of the stockholders of the defendant corporation, held at the Astor House, in the City of New York, on the 24th day of January, 1908, a resolution was made and seconded by some of the stockholders similarly situated with this intervenor and defendant, requesting, demanding and directing that the Board of Directors and officers of the defendant corporation should cause such action or actions to be brought or proceeding or proceedings to be taken on behalf of the defendant corporation, as would enable it to procure the vacating and setting aside of said judgment, and as would enable it to set up and prosecute a defense against the establishment and enforcement of said promissory
35 note, and that said Board of Directors and officers should take such other action in the matter forthwith as would fully protect the said company in the case above mentioned, brought by Paine, Webber & Co.

XIX.

That this intervenor and defendant and other stockholders similarly situated with him voted 21,138 shares in favor of said resolution, but 97,951 shares were cast against said resolution, 93,000 of said shares being cast by Duparquet, Huot & Moneuse Company, claiming to be the assignee of the shares of the said Elie J. Moneuse. That the minority stockholders protested and objected against said shares being voted, upon the ground that the voting of said shares would be another step in the conspiracy which had been entered into as above mentioned, between the said Elie J. Moneuse and the said officers and directors, but said protest and objection was overruled, by the President of the meeting, Peter Quinn, and that thereupon said resolution was defeated, by means of the votes of the shares owned by the said Elie J. Moneuse.

XX.

That notwithstanding the demands above mentioned, the officers and Board of Directors of the defendant corporation have refused and failed and still continue to refuse and fail to make any steps whatever to set aside the aforesaid judgment or to defend
3 against the enforcement and collection of said promissory note.

Wherefore, this intervenor and defendant prays that the aforesaid judgment be set aside and a new trial granted and that he be permitted to file and serve the foregoing answer herein, and that the complaint herein be dismissed with costs, and that the plaintiffs take nothing by their suit, and for judgment against the plaintiffs for such other relief as may be just and proper.

JOHN B. WRIGHT,
Attorney for James B. Riley.

STATE OF NEW YORK,
County of New York, ss:

James B. Riley, being by me first duly sworn on his oath says that he is the intervenor and defendant in the above entitled suit. That he has read the above and foregoing answer and knows the contents thereof; that the same is true in substance and in fact, save and except as to the matters therein stated on information and belief, and that as to such matters he believes it to be true.

JAMES B. RILEY.

37 Subscribed and sworn to before me on this the 4th day of February, A. D. 1908.

[SEAL.] JEAN H. MORRIS,
Notary Public, N. Y. Co., No. 40.

My commission expires March, 1909.

EXHIBIT A.

This Agreement: Made and entered into, in triplicate, this 4th day of June, 1903, by and between James B. Riley, George E. Crawford, parties of the first part, Balthazard Brunner and J. Adam Brunner, parties of the second part, all of the Borough of Manhattan, in the City, County and State of New York, and Elie J. Moneuse, of the same place, party of the third part, Witnesseth:

Whereas, the parties of the first and second parts hereto, together with certain of their friends are owners of more than a majority of the total authorized capital stock of The Copper Belle Mining Company, a corporation organized under the laws of the State of West Virginia, with a capital stock of One Million Dollars, divided into two hundred thousand shares of the par value of Five Dollars each, and

Whereas, the party of the third part, together with certain of his friends, are minority stockholders in the said company, and

Whereas, there are divers liens, judgments and claims of record filed against the said Copper Belle Mining Company, in the

38 Territory of Arizona, by creditors of the said company, which said liens, judgments and claims amount in the aggregate to the sum of about forty-five thousand ($45,000) Dollars, and

Whereas, an action is pending in the Supreme Court of the state of New York, between the parties hereto, in which action the sale and disposition of certain shares of stock in said Copper Belle Mining Company, amounting in the aggregate to about eighty-five thousand (85,000) shares, are enjoined and restrained, and

Whereas, the party of the third part, as the plaintiff in the said action, has demanded an accounting from the parties of the first and second parts, and certain other persons who are enjoined as defendants in said action, of and concerning certain matters and things connected with the property and the administration of the affairs of the said Copper Belle Mining Company, as more fully appears in the complaint in the said action, and

Whereas, it is, in the judgment of all of the parties hereto, to the best interest of the said Copper Belle Mining Company, and the stockholders thereof, that an amicable, just and equitable adjustment and settlement should be made of the various matters and things which are in controversy in the said action, and

Whereas, said mining company has been adjudicated a bankrupt by the U. S. District Court for the District of Arizona, and one A. H. Emanuel has been appointed Trustee in Bankruptcy of said company's property, and

Whereas, the said Copper Belle Mining Company, or said trustee is now the owner and holder of certain mining claims in the said Territory of Arizona, which said claims are, in the opinion of all the parties hereto, of great value, and should yield large profits to the said company, if the same are properly worked and developed, and

Whereas, the present financial condition of the said company is such that it is impossible for the said claims to be worked and developed, and the said company is in great danger of losing the same unless money is raised to work the right, title and interest of the said company, in and to the same.

Now, therefore, in consideration of the premises, of the sum of One Dollar, by each of the parties hereto to the other in hand paid, and of other good and valuable considerations, the receipt of all of which is hereby acknowledged, and of the mutual covenants and agreements which are herein contained, the parties hereto do hereby covenant and agree to and with each other as follows:

First. The party of the third part shall provide and supply, on or before the 20th day of June, 1903, a sufficient sum of money to pay off and discharge all of the just debts due or owing by the said company and in addition thereto, as required from time to time, sufficient funds to enable the said company to work and operate the claims and mines which have been heretofore operated by it, and agrees to apply the said moneys to the payment and discharge of the said debts, and for a period not exceeding three years, to the working and operation of the said claims until the said claims shall yield sufficient returns to pay for working and operating the same; procuring said Bankruptcy and other legal proceedings against said company to be dismissed and terminated, and said company to be restored to the title and possession of its property, free and clear except as to alleged mortgages made to Gleeson and Costello, now in litigation; said funds to be so applied as soon as all the terms and conditions of this agreement shall have been fully carried out, and complied with by the parties of the first and second parts, and the actions of the parties of the first and second parts in

carrying out and complying with the same shall have been in all respects, as far as necessary for the purposes hereof, ratified, confirmed and adopted as and for the act of the said Copper Belle Mining Company, by the directors and stockholders thereof.

41 Second. The parties of the first part hereby agree with the party of the third part, that the parties of the first part will procure the officers and directors of the said Copper Belle Mining Company to permit a complete examination of the books of the said company to be made by any reputable accountant or accountants nominated by the party of the third part, said examination of the books to be made at the office of the company, No. 12 John Street, Borough of Manhattan, New York City, with the provision that the secretary of the company and his bookkeeper may be present at said examination; the said secretary and bookkeeper and the officers of the company will render every assistance and facilitate all matters in connection with such examination of said books; that said accountant will report to the parties hereto, in detail, the exact condition and affairs of said company. It is especially agreed that the said accountant shall particularly inquire into, examine and report upon all of the affairs, facts and conditions of said company which are in issue in the action which is above referred to, in so far as the same may be properly passed upon by him, and that the parties of the first and second parts will give the said accountant, in making said examination, every aid and facility in their power.

Third. Upon the receipt of the report of the said accountant, all of the parties hereto agree to return to the Treasury of the

42 said Company, any and all shares of the capital stock thereof, which may be found, as hereinafter provided, to be owing by them, or any of them, to the said company, or to have been issued (not including stock for commissions for sales of capital stock) without a good and sufficient legal consideration, and the parties of the first and second parts agree to return to the treasury of *the first and second parts agree to return to the treasury of* the said company, shares of the stock hereof which shall be equal to the purchase price paid therefor to the sum or sums of money, if any, as may be found by the said accountant to be due and owing by them to the said company, with interest due up to the date of said report.

Fourth. The parties of the first and second parts agree that there shall be in the treasury of the said company and unissued or owned by it, immediately after the report of the said accountant has been made, including stock that may be returned under Paragraph Third hereof, fifty (50 *per cent*) per cent of the total authorized capital stock of the said company, and that if less than said fifty (50 *per cent*) per cent shall then be in the said treasury, that then, and in that event, the said parties of the first and second parts will, without further consideration, return and transfer out of and in proportion to their respective individual holdings, whether in their names

43 or in the names of others for them, to the said company, enough of the capital stock thereof, which shall then be held by them, to make up and complete fifty per cent.

Fifth. The parties of the first part hereby stipulate and agree to procure as soon as may be practicable, after the execution of this agreement, the resignations of the present President and Treasurer, and the present Board of Directors of said company, and all of the parties hereto agree that a stockholders' meeting shall be called as soon as may be practicable, for the purpose of electing a new Board of Directors, and that the vacancies which may be caused by the resignation of the said officers of the said company shall be filled as soon as may be practicable by the said Board of Directors.

Sixth. It is further agreed by all the parties hereto, that the said company shall issue and deliver to the party of the third part, the treasury shares of the capital stock of the said company which shall be equal to fifty (50 per cent) per cent of the total authorized capital stock of the said company, provided for in the fourth clause hereof, less the amount of the holding of the party of the third part, in consideration of the advance, by the party of the third part, of the moneys which are to be paid and advanced by him, as above provided for, and without further consideration whatsoever.

44 Seventh. It is further stipulated and agreed by and between the parties hereto, that the parties of the first part shall have the right to nominate one of the directors, and that the parties of the second part shall have the right to nominate another one of the directors upon the Board, which nominees shall be chosen to fill the place of the directors now in office and that the party of the third part shall have the right to nominate three of the directors upon the said Board, and each of the parties hereto agree to vote all the stock which is now or shall at the date of the said election be held by him, or them respectively, in favor of the directors which shall be so nominated.

Eighth. It is further stipulated and agreed by the parties of the first and second parts that the party of the third part shall nominate a president and treasurer of his own choice, of the company, and that all of the parties hereto will procure the election of such persons, as the party of the third part may nominate for the said offices.

Ninth. The party of the third part hereby agrees to elect and retain in office, George E. Crawford, as secretary of said company, and James B. Riley, as directors and vice president, for the term of one year.

Tenth. It is further agreed by all the parties hereto that

45 such resolutions as may be necessary or proper to carry out and have performed on the part of the parties hereto, or on the part of the said Copper Belle Mining Company, the terms and provisions of this agreement, and all of them, to the true intent and purpose thereof, shall be submitted to and adopted by the new Board of Directors, and by the stockholders of the said company, at meetings of the said Board of Directors and stockholders to be forthwith called for that purpose, and each of the parties hereto hereby covenants and agrees that he will give his best effort, aid and endeavor, and his votes, to procure the adoption of the said resolution.

Eleventh. The party of the third part hereby covenants and agrees

that when all of the terms and conditions of this agreement shall have been fully performed and carried out by the parties of the first and second parts and by the said new officers and new Board of Directors of the said Company, who shall have been duly elected, and when all of the terms of this agreement shall have been fully confirmed, ratified and adopted, by the said directors, and by the stockholders of the said Copper Belle Mining Company, as and for the acts of the said Company, and then the party of the third part will deliver to the parties of the first and second parts, a consent to the discontinuance of the action which is now pending in the
46 Supreme Court in the county of New York and which is above referred to, and will also deliver to the parties of the first part a consent to vacate the injunction order which has been entered in the said action.

Twelfth. It is further agreed that when the number of shares to be transferred to the treasury of the Copper Belle Mining Company by the parties of the first and second parts hereto, shall have been ascertained, as hereinbefore prescribed a stipulation shall be signed by the attorneys for the parties hereto, the parties to said action, and an order entered therein, providing that the injunction entered in said action be vacated, as to all parties to said action, as far as it refers to the stock of the Copper Belle Mining Company deposited with the Knickerbocker Trust Company under an agreement between the parties of the first and second parts hereto and John Gleeson, and that the said Knickerbocker Trust Company shall thereupon forthwith transfer, release or cancel the said seventy-seven hundred (7,700) shares now standing in the name of said Gleeson, and also the shares of stock as herein required, and that said shares shall be transferred to the Treasury of the Copper Belle Mining Company, and the parties of the first part and second part shall enter into the possession of such remaining shares so deposited as they may severally be entitled to, and the parties of the first and second
47 part hereby agree to, at the time of the execution of the stipulation hereinbefore referred to, execute such consent or order upon the said Knickerbocker Trust Company, as may be required or advised for the purpose of such transfers.

Thirteenth. The report of the accountant above directed shall be submitted to Henry J. Mayer, James F. Mack and Joseph N. Goldbacher, who shall thereupon pass upon and decide the number of shares to be transferred to the treasury of the Copper Belle Mining Company, by the parties hereto, as above specified. Should said Henry J. Mayer, James F. Mack and Joseph N. Goldbacher disagree upon any question or matter connected herewith, the point in disagreement shall be submitted to some disinterested attorney, selected by the majority of the said three, and the decision of the said nominee upon such point or points shall be final.

This agreement shall bind all of the parties hereto, their personal representatives and assigns.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

In the presence of

JAMES F. MACK FOR

JAMES B. RILEY.
GEORGE E. CRAWFORD. [L. S.]

48 JOSEPH N. GOLDBACHER AS TO

BALTHAZARD BRUNNER,
Per JEAN ADAM BRUNNER, *Att'y.*
JEAN ADAM BRUNNER. [L. S.]

HENRY J. MAYER FOR

ELIE J. MONEUSE. [L. S.]

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared James B. Riley, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

JAMES F. MACK,
Notary Public, New York County.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared George E. Crawford, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

JAMES F. MACK,
Notary Public, New York County.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared J. Adam Brunner, to me known and known to me to be the
49 individual who executed the foregoing instrument as the attorney for Balthazard Brunner, and the said J. Adam Brunner, being by me first duly sworn, did depose and say that he holds a duly executed power of attorney from the said Balthazard Brunner, whereby he, the said J. Adam Brunner, is authorized and empowered to execute, acknowledge and deliver the said agreement, for and in the name, place and stead of the said Balthazard Brunner, and the said J. Adam Brunner did thereupon acknowledge to me that he had executed the same in the name of and as such attorney for said Balthazard Brunner, for the uses and purposes which are therein set forth.

JOSEPH A. FARLEY,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared J. Adam Brunner, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

JOSEPH A. FARLEY,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared Elie J. Monesue, to me known and known to me to be one
50 of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

HENRY J. MAYER,
Notary Public, N. Y. Co., No. 47.

Filed Feby. 10th, 1908.

(Title of Court and Cause.)

Judgment.

This cause having come on for trial before the Court, sitting without a jury, a jury having been expressly waived by all parties hereto, and the plaintiffs and defendant and intervenor appearing through their attorneys in open court, and the evidence having been introduced, and the case argued and submitted to the Court, and the Court having taken the same under advisement.

Now on this the 9th day of September, A. D. 1909, the Court having rendered its decision herein, adverse to the plaintiff,

It is ordered, adjudged and decreed that the plaintiffs take nothing by their action herein; that judgment be entered for the defendant and the intervenor, and that the defendant and intervenor have and recover of and from the plaintiffs, their costs in this
51 behalf expended, which costs are taxed at the sum of — Dollars.

Done in open court this 9th day of September, A. D. 1909.

JOHN H. CAMPBELL,
Judge of said Court.

TERRITORY OF ARIZONA,
County of Pima, ss:

I, Allan B. Jaynes, Clerk of the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, do hereby certify that the foregoing papers comprise a full, true and correct Judgment Roll, as appears of record, in the case of William A. Paine, Herbert I. Foster, Thomas S. Dee and Leonard D. Draper, co-partners doing business under the name and style of Paine, Webber & Company, plaintiffs, vs. Copper Belle Mining Company of Arizona, defendant. James B. Riley, intervenor. No. 1661

Witness my hand and the seal of said Court, this 27th day of October, A. D. 1909.

[SEAL.] ALLAN B. JAYNES, *Clerk*,
By S. L. FEIGHAN, *Deputy*.

And on the same day, to-wit: the third day of January 1910, came the appellants by their attorneys and filed in the Clerk's office of said Court in said entitled cause a certain Motion for New Trial, Transcript of Minute Entries and Plaintiffs' Exhibit "A," in words and figures following to-wit:

Title of Court and Cause.

Motion for New Trial.

Come now the plaintiffs herein by Walter Bennett, their attorney, and move the Court to set aside the decision and judgment of
52 the Court in said cause rendered on the 9th day of September, 1909, and to grant the plaintiffs herein a new trial of said cause upon the following grounds:

I.

The Court erred in admitting improper and incompetent evidence offered by the defendant and objected to by plaintiff.

II.

The Court erred in refusing to admit compet- evidence offered by plaintiffs.

III.

The facts found by the Court are contrary to the evidence and against the weight thereof.

IV.

The facts found by the Court do not support the decision and judgment of the Court.

V.

The judgment of the Court is contrary to the law and the evidence in the case and is not supported by the evidence.

WALTER BENNETT,
Attorney for Plaintiffs.

Filed Sept. 11th, 1909.

53 (Title of Court and Cause.)

Transcript of Minute Entries and Bond on Appeal.

Be it remembered, That heretofore and upon, to-wit, the fourth day of January, A. D. 1908, the same being one of the regular juridical days of the October, 1907, term of said Court, the following

order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

This matter came on this day regularly to be heard upon the petition of James B. Riley et al., for an order of this Court allowing said petitioner twenty days in which to prepare and file pleadings in intervention herein, John B. Wright, Esq., appearing as counsel for the petitioners, and Walter Bennett, Esq., for the plaintiffs. Argument of the respective counsel was had, and the matter being fully submitted to the Court, and the Court being fully advised in the premises, does deny said petition. Y-5.

And afterwards, and upon, to-wit: the same day, the follow-
54 ing other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

This cause came on this day regularly for trial before the Court, Walter Bennett, Esq., appearing as counsel for the plaintiffs, and the defendant not appearing either in person or by counsel; and the default of said defendant having been duly entered according to law, the trial of the case proceeds as follows: The plaintiffs, to maintain upon their part the issues herein, called as a witness Walter Bennett, who was duly sworn and examined, and also introduced certain documentary evidence, and thereupon the plaintiffs rested their case. The defendant offered no testimony, and no further testimony being offered on either side, and the evidence being closed, said matter was fully submitted to the Court without argument. And the Court being fully advised in the premises, orders that judgment be entered herein in favor of the plaintiffs and against the defendant, in accordance with the prayer of the complaint herein. Y-5 & 6.

And afterwards, and upon, to-wit: the same day, the fol-
55 lowing other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

It is by the Court ordered that execution be stayed until the further order of this Court. Y-6.

And afterwards, and upon, to-wit: the eighth day of February, A. D. 1908, the same being one of the regular juridical days of the October, 1907, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

It is by the Court ordered that the motion to set aside the judgment and petition for leave to intervene herein, be and the same is now set for hearing on Saturday, February 15, 1908, at 9:30 o'clock a. m. Y-24.

56 And afterwards, and upon, to-wit: the fifteenth day of February, A. D. 1908, the same being one of the regular juridical days of the October, 1907, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

Upon motion of Walter Bennett, Esq., counsel for the plaintiff herein, it is ordered that the order heretofore made setting the motion to set aside the judgment and petition for leave to intervene herein, for hearing on this day, be and the same is now vacated; and it is further ordered that said matter be set for hearing on Saturday, February 29, 1908, at 9.30 o'clock a. m. Y-29.

And afterwards, and upon, to-wit: the twenty-ninth day of February, A. D. 1908, the same being one of the regular juridical days of the October, 1907, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

57 4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

By consent of counsel for the respective parties hereto, it is ordered that the motion of James B. Riley, petitioner herein, to vacate the judgment and for leave to intervene herein, be and the same is now

set for hearing on Thursday, April 16, 1908, at 9:30 o'clock a. m. Y-37.

And afterwards, and upon, to-wit: the same day, the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

Upon motion of John B. Wright, Esq., counsel for the petitioner herein, it is ordered that said petitioner be granted a stay of execution until Thursday, April 16, 1908, Walter Bennett, Esq., counsel for the plaintiffs herein, consenting thereto. Y-37.

58 And afterwards, and upon, to-wit: the fifteenth day of April, A. D. 1908, the same being one of the regular juridical days of the October, 1907, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

It is by the Court ordered that the motion filed herein on February 4, 1908, by James B. Riley, be and the same is now continued for the term. Y-106.

And afterwards, and upon, to-wit: the ninth day of May, A. D. 1908, the same being one of the regular juridical days of the April, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

59 It is by the Court ordered that the motion of James B. Riley to set aside the judgment herein, be and the same is now set for hearing on Saturday, May 23, 1908, at 9:30 o'clock a. m. Y-184.

And afterwards, and upon, to-wit, the twenty-third day of May, A. D. 1908, the same being one of the regular juridical days of the April, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
THE COPPER BELLE MINING COMPANY OF ARIZONA, Defendant.

By consent of counsel for the respective parties hereto, it is ordered that the order heretofore made setting the motion of the defendant to vacate the judgment herein for hearing on this day, be and the same is now vacated; and it is further ordered that said matter be set for hearing on Saturday, June 6, 1908, at 9:30 o'clock a. m. Y-251.

And afterwards, and upon, to-wit: the sixth day of May, A. D. 1908, the same being one of the regular juridical days of the April, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

60 4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
THE COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant.

This matter came on this day regularly to be heard upon the motion of James B. Reilly, Esq., to set aside the judgment and for leave to intervene herein, Walter Bennett, Esq., appearing as counsel for the plaintiffs and John B. Wright, Esq., for the petitioner. Argument of the respective counsel was had, and the matter being fully submitted to the Court, the same was by the Court taken under advisement. Y-284.

And afterwards, and upon, to-wit: the twenty-second day of June, A. D. 1908, the same being one of the regular juridical days of the April, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
THE COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant.

61 The motion of James B. Reilly et al., to set aside the judgment and for leave to file a petition in intervention herein having been heretofore argued and fully submitted to the

Court, and the Court being fully advised in the premises, does grant said motion and orders that the judgment heretofore entered herein be and the same is now vacated and that James B. Riley et al., the petitioners herein, be granted leave to file a petition in intervention herein. Y-331.

And afterwards, and upon, to-wit: the fourteenth day of November, A. D. 1908, the same being the one of the regular juridical days of the October, 1908, term of said Court, the following order, inter alia, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et als., Intervenors.

It is ordered that this case be set for trial on Monday, February 8, 1909, at 9:30 o'clock a. m. Y-486.

And afterwards, and upon, to-wit: the thirtieth day of January, A. D. 1909, the same being one of the regular juridical days
62 of the October, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
THE COPPER BELLE MINING COMPANY OF ARIZONA, Defendant; JAMES B. RILEY et al., Intervenors.

By consent of counsel for the respective parties hereto, it is ordered that the order heretofore made setting this case for trial on Monday, February 8, 1909, be and the same is now vacated; and it is further ordered that this case is now set for trial on Monday, March 29, 1909, at 9:30 o'clock a. m. Z-77.

And afterwards, and upon, to-wit: the twenty-seventh day of March, A. D. 1909, the same being one of the regular juridical days of the October, 1908, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

63 By consent of counsel for the respective parties hereto, it is ordered that the order heretofore made setting this case for

trial on Monday, March 27, 1909, be and the same is now vacated; and it is further ordered that this case be and the same is now continued for the term. Y-93.

And afterwards, and upon, to-wit, the fifteenth day of May, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

It is ordered that this case be set for trial on Wednesday, June 16, 1909, at 9:30 o'clock a. m. Z-231.

And afterwards, and upon, to-wit: the sixteenth day of June, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which
64 said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et als., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et als., Intervenors.

This case came on this day regularly for trial before the Court sitting without a jury, a trial by jury having been in open Court expressly waived by the respective parties hereto, Walter Bennett, Esq., appearing as counsel for the plaintiffs and the defendant not appearing either in person or by counsel, and the default of said defendant having been duly entered according to law, and John B. Wright, Esq., appearing as counsel for the intervenors, and the parties announce ready for trial. Whereupon the plaintiffs, to maintain upon their part the issues herein, introduced certain documentary evidence and thereupon the plaintiffs rested their case. The intervenors then, to maintain upon their part the issues herein, called as a witness James B. Riley, one of the intervenors, who was duly sworn, examined and cross-examined and also introduced certain documentary evidence and also introduced certain written testimony, being the depositions of Geo. E. Crawford and John J. Bunty, and also called as a witness Frank H. Hereford, who
65 was duly sworn, examined and cross-examined, and thereupon the intervenors rested their case. The plaintiffs then moved the Court to dismiss the petition of the intervenors herein,

which motion was by the Court taken under advisement. By consent of counsel for the respective parties hereto, the trial of the case proceeded, subject to the ruling of the Court on said motion and the plaintiffs and defendants in intervention then, to maintain upon their part the issues herein, introduced certain written testimony, being the depositions of Eli J. Moneuse and Peter Quinn, and exhibits attached thereto, and also introduced certain documentary evidence, being the vouchers accompanying the deposition of Eli J. Moneuse, marked Plaintiff's Exhibit B, and thereupon the plaintiffs and defendants in intervention rested their case. And this being the usual hour of recess the further trial of this case was ordered continued until Thursday, June 17, 1909, at 9:00 o'clock a. m. Z-304.

And afterwards, and upon, to-wit, the seventeenth day of June, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et als., Plaintiffs,

vs.

66 COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et als., Intervenors.

This case having been continued from yesterday's session of this Court, come now the same parties hereto, and the further trial of the case proceeds as follows: Argument of the respective counsel was had and thereupon counsel for the intervenors moved the Court to dismiss this action and for judgment in favor of the intervenors for *his* costs for the reason that the complaint does not state facts sufficient to constitute a cause of action. Argument of the respective counsel was had and the matter being fully submitted to the Court and the Court being fully advised in the premises, does deny said motion. And said cause being now fully submitted to the Court for its consideration and decision, the same was by the Court taken under advisement. Z-306.

And afterwards, and upon, to-wit: the ninth day of September, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,

vs.

67 COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant; JAMES B. RILEY et als., Intervenors.

This case having been tried and fully submitted at a previous session of the present term of this Court, and the Court being now fully

advised in the premises, it is ordered that judgment be entered herein in favor of the defendants and against the plaintiffs, in accordance with the judgment signed and filed herein. Z-343.

And afterwards, and upon, to-wit, the eighteenth day of September, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

It is ordered that the motion of the plaintiffs for a new trial herein be set for hearing on Monday, September 20, 1909, at 9:30 o'clock a. m. Z-362.

68 And afterwards, and upon, to-wit: the twentieth day of September, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

It is by the Court ordered that the order heretofore entered herein setting the motion of the plaintiff for a new trial for hearing on Monday, September 20, 1909, be and the same is now vacated; and it is further ordered that said matter be and the same is now passed on the calendar. Z-364.

And afterwards, and upon, to-wit: the first day of October, A. D. 1909, the same being one of the regular juridical days of the April, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

69 4264.

WILLIAM A. PAINE et al., Plaintiffs,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

Upon motion of Walter Bennett, Esq., counsel for the plaintiff herein, John B. Wright, Esq., counsel for the intervenors assenting

thereto, and it appearing to the Court that there is good cause therefor, it is ordered that the motion of the defendants for a new trial herein be and the same is now continued for the term. Z-382.

And afterwards, and upon, to-wit: the twenty-sixth day of October, A. D. 1909, the same being one of the regular juridical days of the October, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

It is ordered that the motion of the plaintiff for a new trial herein be set for hearing on Thursday, October 28, 1909, at 9:30 o'clock a. m. Z-408.

70 And afterwards, and upon, to-wit: the twenty-eighth day of October, A. D. 1909, the same being one of the regular juridical days of the October, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

This matter came on this day regularly to be heard upon the motion of the plaintiffs for a new trial herein, and said matter being fully submitted to the Court without argument, and the Court being fully advised in the premises, does overrule said motion. Z-433.

And afterwards, and upon, to-wit: the thirtieth day of October, A. D. 1909, the same being one of the regular juridical days of the October, 1909, term of said Court, the following order, inter alia, was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
71 COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

Come now the plaintiffs and except to the ruling of the Court in overruling their motion for a new trial herein and give notice of appeal to the Supreme Court of this Territory from the order overruling the motion for a new trial and from the judgment. Z-454.

And afterwards, and upon, to-wit: the same day, the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

4264.

WILLIAM A. PAINE et al., Plaintiffs,
vs.
COPPER BELLE MINING COMPANY OF ARIZONA, a Corporation, Defendant, and JAMES B. RILEY et al., Intervenors.

By stipulation of counsel for the respective parties hereto, made in open Court, the plaintiffs are granted thirty (30) days from this date in which to present a bill of exceptions to the Court. Z-455.

TERRITORY OF ARIZONA,
County of Pima, ss:

72 I, Allan B. Jaynes, Clerk of the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, do hereby certify that the foregoing fifteen pages of typewritten matter constitute a true, full and correct copy of all minute entries in the case of William A. Paine et al., Plaintiffs, vs. Copper Belle Mining Company of Arizona, a corporation, Defendant, and James B. Riley et al., Intervenors, No. 4264 in said Court, as the same appears from the original records of the same, remaining in my office, and that the papers hereto attached are all of the papers constituting the record in the case.

And I further certify that the plaintiffs in said cause have paid into Court the sum of Three Hundred Dollars ($300.00), that being the amount of the appeal bond fixed by me in this cause, in lieu of a bond on appeal herein, in accordance with the provisions of Chapter II, Session Laws of Arizona, 1909.

Witness my hand and the seal of said Court affixed this 31st day of December, A. D. 1909.

[SEAL.]

ALLAN B. JAYNES,
Clerk as Aforesaid.

78 PLAINTIFFS' EXHIBIT "A."

$265,416.72. NEW YORK, *July 22nd*, 1907.

On demand, after date, we promise to pay to the order of Duparquet, Huot & Moneuse Co. Two hundred and Sixty-five thousand Four hundred and Sixteen 72-100 Dollars at 43 & 45 Wooster St., New York City.

COPPER BELLE MINING CO. OF ARIZONA,
PETER QUINN, *Pres'd't;*
E. J. MONTEUSE, *Tre-s. and Sec't'y.*

Value received.
Interest at 6% p. a.
No. —. Due —.

DUPARQUET, HUOT AND MONEUSE CO.,
LOUIS H. HUOT, *Treas.;*
E. J. MONEUSE, *Pres.*

Presented and dishonored.

STATE OF NEW YORK,
United States of America,
City and County of New York, ss:

I, Arthur W. McKay, a Notary Public of the State of New York, duly commissioned and sworn, dwelling in the County of Kings, do hereby certify, that on the 30th day of July, in the year of our Lord one thousand nine hundred and seven, at the repuest of National Copper Bank of New York, I did present the original note, hereunto annexed, at the place where the same is made payable in the City of New York, and did demand payment thereof, which was refused.

Whereupon, I, the said Notary, at the request, aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the makers and endorsers of the said note as against all others whom it doth or may concern, for exchange, re-
74 exchange, and all costs, damages and interest already incurred and hereafter to be incurred, for want of payment of the same.

I duly notified the parties to said note of the demand and of its non-payment.

Thus done and protested on the day and year aforesaid.

In Testimony Whereof, I have hereunto set my hand and affixed my seal at the City of New York as aforesaid.

[SEAL.] A. W. McKAY,
Notary Public, Kings County.

Clf. filed in N. Y. County, 115 Broadway, New York City.

75 And on the same day to-wit: the third day of January, 1911, came the appellants by their attorneys and filed in the Clerk's office of said Court in said entitled cause a certain Request

for Default, Affidavits of Walter Bennett, Jas. F. Mack and Jno. B. Wright, James F. Mack, Marie L. Brunner, William P. Michel, Peter G. Jeffrey, John J. Bunte, James B. Riley, William Dietz, James F. Mack, George E. Crawford, Certified copy of Stockholders' Meeting, Depositions of James B. Riley, Geo. E. Crawford, William P. Michel and John J. Bunte, Elie J. Moneuse, Peter Quinn, Intervenor's Exhibits 2 (Lease) and A (Agreement), 4 and 5, (Minute Books), Stipulation in regard to Plaintiffs' Exhibit "B," Opinion of Trial Court, Reporter's Transcript of Testimony, copies of which are omitted from this Transcript by direction of attorneys for appellants.

76 And on to-wit: the tenth day of January, 1910, being one of the regular juridical days of the January Term of said Court, 1910, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on the call of the Calendar, it is ordered by the Court, that this cause be passed for the present.

And on the same day to-wit: the tenth day of January, 1910, being one of the regular juridical days of the January Term of said court, 1910, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

At this day, attorneys for appellants and appellees consenting, it is ordered by the Court that this cause be continued for the term.

And on to-wit: the twenty-second day of January, 1910, being one of the regular juridical days of the January Term of said Court, 1910, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

77 Title of Cause.

At this day, on motion of Mr. Walter Bennett, for appellants herein, it is ordered by the Court that the appellants herein be granted until May 1st, 1910, within which to file the abstract of record and their opening brief, and

It is further ordered that the appellees be granted until the 1st day of August 1910, within which to file their brief and that the appellants have until the 1st day of October, 1910, within which to file reply brief if they desire to file such reply brief.

And on to-wit: the second day of April, 1910, being one of the regular juridical days of the January Term of said Court, 1910, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on motion of Mr. Walter Bennett for appellants herein, it is ordered by the Court that the appellants herein be granted until July 15th, 1910, in which to prepare and file their abstract of record and briefs.

It is further ordered that the appellees herein be granted until the 31st day of October, 1910, in which to file their answering
78 brief, and that the appellants shall have until the 15th day of December, 1910, in which to file a reply brief if they desire to file such reply brief.

And on to-wit: the tenth day of January, 1911, being one of the regular juridical days of the January Term of said Court, 1911, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on motion of Mr. Walter Bennett, attorney for appellants herein, it is ordered by the Court that two hours be granted for oral argument in this cause, and the hearing set for January 11th, 1911.

And on to-wit: the eleventh day of January, 1911, being one of the regular juridical days of the January Term of said Court, 1911, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on motion of Walter Bennett, Esq., attorney for appellants herein, it is ordered by the Court that he be granted permission to make correction in abstract of record.

79 And on the same day to-wit: the eleventh day of Juanary, 1911, being one of the regular juridical days of the January Term of said court, 1911, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

This cause coming on at this time for hearing was argued by Walter Bennett, Esq., for appellants and John B. Wright, Esq., for appellees, and cause ordered submitted.

And on to-wit: the twenty-seventh day of March, 1911, there was filed in the clerk's office of said Court in said entitled cause, a certain Opinion, in words and figures following, to-wit:

80 In the Supreme Court of the Territory of Arizona.

No. 1149.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners, Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Defendant; JAMES B. RILEY, Intervenor and Appellee.

Appeal from the District Court of the First Judicial District of the Territory of Arizona in and for the County of Pima.

John H. Campbell, Judge.

Affirmed.

Kibbey, Bennett & Bennett, for appellants.

John B. Wright and W. J. Galbraith for appellee.

LEWIS, *J.*:

This is an action by the plaintiffs and appellants, copartners as Paine, Webber & Co., against the defendant the Copper Belle Mining Company of Arizona, for the recovery of $265,416.72 and interest upon a promissory note alleged to have been executed and delivered to Duparquet, Huot & Moneuse Co. and transferred to the plaintiffs. The defendant failed to answer below and is not represented in this court. Prior to the entry of the default of the defendant, one

81 James B. Riley, as a stockholder, filed a petition in intervention asking leave to defend on behalf of the defendant corporation, which petition was denied. The default of the defendant was thereupon entered and judgment granted the plaintiffs as against the defendant in the amount prayed for. Thirty days thereafter but during the term said Riley moved the court to set aside and vacate the judgment theretofore rendered and allow him to intervene and defend on behalf of the defendant corporation and to rehear his motion for intervention and to grant a new trial. He submitted as a part of his motion a proposed plea in intervention, answer and affidavits setting up facts tending to excuse the delay in the presentation of a sufficient petition in intervention, showing want of consideration for the note, fraud in the securing of the note and additional matters which if presented in due time, would have justified the trial court in allowing intervention. The minute entries disclose that the hearing of this motion was continued from time to time and finally over the term. At the succeeding term of the court, an order was entered granting said motion and ordering that the judgment theretofore entered be vacated and that the intervenor be granted leave to file a petition in intervention. Thereafter, the cause was tried upon the complaint and answer in intervention, and judgment was rendered that the plaintiffs take nothing by their

action. From the judgment and the order denying a motion
82 for new trial, this appeal is taken.

The appellants contend that the trial court erred in setting aside the judgment and ordering a new trial when no motion therefor was made within the five days after the entry of the judgment as required by R. S. 1901, Par. 1478. The trial court had complete power over its judgment during the term, no appeal having been perfected. Spicer v. Simms, 6 Ariz. 347, Svea Ins. Co. v. McFarland, 7 Ariz. 131. It had discretionary power to entertain a motion to set aside and vacate its judgment and to grant a new trial at any time during the term. Spicer v. Simms, supra. This discretionary power was not lost by the lapse of the term where the record discloses that the motion was entertained by the court and was continued over the term. Goddard v. Ordway, 101 U. S. 745, City of New Orleans v. Thatcher, 91 Fed. 574-85, Watson v. Le Grand Roller Skating Rink Co., 177 Ill. 203, 52 N. E. 317, Black, Judgments, Secs. 306 and 310. Nor was the jurisdiction of the court to grant the motion lost because the motion was made by one not a party to the action, he having nevertheless, an interest in the subject matter of the suit affected by the judgment. O'Keefe v. Foster, 5 Wyo. 343, 40 Pac. 525. The case of National Metals Co. v. Greene Consolidated Copper Co., 9 Ariz. 192, is distinguished in this essential feature: that the motion there considered by this court was one filed at a subsequent term.

The appellants further complain that the court erred in
83 permitting the intervention of Riley after final judgment had been rendered in the case, as the statute only permits such intervention before judgment. The right to intervene under Paragraph 1278, R. S. 1901, is limited to any time before the trial. Prior to trial the court must hear and determine an application in intervention. Subsequent to the commencement of the trial, leave to intervene may be granted in the exercise of sound discretion, but is not a matter of right. We have held that it is within the power of the trial court to set aside a judgment rendered during the term or at a subsequent term to which its jurisdiction has been extended by the continuance of a motion therefor. Upon the judgment being vacated and a new trial ordered, applications to intervene are to be determined by the same rules as if no judgment had been theretofore rendered. The sufficiency of the petition in intervention not being questioned, there was no error in the trial court in the exercise of its inherent power vacating its former judgment and granting a new trial and thereupon considering and permitting the intervention of Riley.

The appellants complain that the trial court found by its judgment that no consideration existed for the execution of the note sued upon. It is conceded by the parties to this appeal that the consideration for the note is to be found, if at all, in the furnishing of money for the use of the Copper Belle Mining Company
84 of West Virginia—the predecessor in interest of the defendant corporation—and for the defendant corporation under a certain contract entered into between stockholders of the company. The question is thus stated by the appel-

lants: "The real controversy and difference between the plaintiffs and the intervenor is whether this contract construed in the light of all the surrounding facts and circumstances existing at the time it was entered into created by the relation of debtor and creditor between the Copper Belle Mining Company and Mr. Moneuse for the money 'provided', 'supplied' and 'advanced', or whether the money so 'advanced, provided and supplied' was the purchase price of the stock issued to him."

The contract to be interpreted is long. Its recitals are thus summarized by appellants:

"That at the time the contract was entered into the corporation owned or had owned some mining property in Arizona believed to be valuable if properly managed and worked. That its capital stock was divided into 200,000 shares of the par value of $5.00 per share; that the majority of this stock stood on the books of the company in the names of Riley, Crawford and the Brunners, the first and second parties to the contract; and that the legality of the issue of at least 85,000 shares of this stock to them was then being investigated in the Supreme Court of the State of New York; that Riley, Crawford and the Brunners owned or had standing in their names a
85 large majority of the stock of the corporation and had been in the absolute control of the corporation; that under their administration the company had contracted debts exceeding $45,000, besides mortgages to Gleason and Costello of $85,000, and the company had been declared bankrupt by the district court of Cochise County; its property was taken from it and was in the hands of the trustee in bankruptcy and was about to be sold at auction and the proceeds distributed to its creditors."

"In this situation," say the appellants, "the evidence shows the stock of these majority stockholders, whether honestly or dishonestly acquired, was worthless, and not worth further litigation over. Moneuse was a small stockholder, holding only 1,000 shares, but he had money and had faith in the value of the company's property if it could be redeemed and properly managed, and by the contract in evidence he agreed that if these majority stockholders would turn over to him by means of surrender to the company and reissue to him, so much of their holdings of stock as would amount to 50 per cent of the stock of the company and place him in the complete control of the company by the election of directors and officers of his choice, he would "advance" (loan) to the company sufficient money to pay its debts, restore its property to it and pay its operating expenses for three years, believing that in that time, he could place it on a paying basis."

The essential provisions of the contract follow:

"First. The party of the third part shall provide and supply, on or before the 20th day of June, 1903, a sufficient sum of money to pay off and discharge all of the just debts due or owing by the said company and in addition thereto, as required from time to time, sufficient funds to enable the said company to work and operate the claims and mines which have been heretofore operated by it, and agrees to apply the said moneys to the payment and discharge of the said debts, and for a period not exceeding three years, to the

working and operation of the said claims, until the said claims shall yield sufficient returns to pay for working and operating the same; procuring said Bankruptcy and other legal proceedings against said company to be dismissed and terminated and said company
86 to be restored to the title and possession of its property, free and clear except as to alleged mortgages made to Gleason and Costello, now in litigation; said funds to be so applied as soon as all the terms and conditions of this agreement shall have been fully carried out, and complied with by the parties of the first and second parts, and the actions of the parties of the first and second parts in carrying out and complying with the same shall have been in all respects, as far as necessary for the purposes hereof, ratified, confirmed and adopted as and for the act of the said Copper Belle Mining Company, by the directors and stockholders thereof." * * *

"Sixth. It is further agreed by all the parties hereto that the said company shall issue and deliver to the party of the third part, the treasury shares of the capital stock of the said company which shall be equal to fifty (50 per cent) per cent of the total authorized capital stock of the said company, provided for in the fourth clause hereof, less the amount of the holding of the party of the third part, in consideration of the advance, by the party of the third part, of the moneys which are to be paid and advanced by him, as above provided for, and without further consideration whatsoever."

"Tenth. It is further agreed by all the parties hereto that such resolutions as may be necessary or proper to carry out and have performed on the part of the parties hereto, or on the part of the said Copper Belle Mining Company, the terms and provisions of this agreement, and all of them, to the true intent and purpose thereof, shall be submitted to and adopted by the new Board of Directors, and by the stockholders of the said company, at meetings of the said Board of Directors and stockholders to be forthwith called for that purpose, and each of the parties hereto hereby covenants and agrees that he will give his best effort, aid and endeavor, and his votes, to procure the adoption of the said resolution."

The interpretation of the contract is not without difficulty. Webster defines the noun "advance" as a "furnishing of something before an equivalent is received, or on loan. In the case of an advance as distinguished from an advancement there arises the relation of debtor and creditor or else the advance is in the nature of an
87 absolute gift." See also Universal Dictionary, Black's Law Dictionary. That advance has no such certain meaning as would enable the court to determine the sense in which it was used by the parties to the contract without examining the contract as an entirety and perhaps seeking the aid of the surrounding circumstances and the practical construction of the contract by the parties is shown by the varied meanings given to the word in Henderson v. Reese, 108 Fed. 709, Monroe v. Turney, 35 Ala. 137, Nolan v. Burton, 25 Ga. 352, Mudson v. Watson, 62 S. E. 305, Carpenter v. Plagge, 192 Ill. 82, 61 N. E. 530, Fisher v. Parr, 92 Md. 242, 48 Atl. 621, State v. Rice, 43 S. E. 250, 20 S. E. 986, Kinney v. Hynds, 49 Pac. 404. In determining its meaning as used in this contract, it is significant to note that the contract is between stockholders of

a corporation; that the corporation is not a party thereto although it is contemplated that its assent would be later obtained, and that the resolution assenting to the contract is not before us, notwithstanding counsel have stipulated that the record contains all minutes essential to a determination of the case. The obligation is now sought to be enforced against the Arizona corporation, the successor in interest of the West Virginia corporation. Regarding the Arizona company as identical in interest it is entitled in the interpretation of this contract to the benefit of the principle that where a party takes an agreement prepared by another and upon its faith incurs
88 obligations, he should have it construed favorably to himself. Noonan v. Bradley, 9 Wall. 394; Garrison v. United States 7 Wall. 688. Nor do we think the rule less pertinent because the intervenor was a party to the preparation of the contract. He is here defending in the right of the corporation and for its benefit.

Another principle made use of in the Noonan case, supar, is likewise applicable that, "when an instrument is susceptible of two constructions, the one working injustice and the other consistent with the right of the case, that one should be favored which standeth with the right."

The construction asked for by the appellants means that the parties to the contract contemplated the giving to Mr. Moneuse the majority of the stock of a corporation owning a property "of great value and which should yield large profits" conditioned that he loan the company money to pay off debts approximating $50,000 and during the succeeding three years such further funds to place the property on a paying basis as he saw fit, at the end of which time in the event the corporation did not repay the loan, the entire property was to be subject to the legal enforcement of the debt. The construction contended for by appellees means the giving of the majority of the stock of the corporation to Mr. Moneuse in consideration of the furnishing of such moneys in the expectation that the stock of all concerned would thereby be made permanently
89 valuable. There is no question, but that the first construction would place the corporation at the mercy of Mr. Moneuse, resulting in injustice—the second injustice.

The argument of appellants that it is not unusual to place no exact limit upon the amount of future advances or loans to be made, because repayment being stipulated for or contemplated the amount advanced, within reasonable limits, is not material, but it is unthinkable that a purchase of property should be made and the purchase price remain an unascertained amount, does not carry conviction. As applied to ordinary business transactions in properties the values of which are ascertainable and stable there is much force in the contention. Here, however, the entire enterprise was speculative. The value of the mine, believed to be large, was unknown and unknowable. The rewards of a successful venture might be enormous. The amount of the advances immediately to be made, though in fact large were to the supposed value relatively small. The future expenditures were dependent not upon the demands of others, but wholly upon the will of Mr. Moneuse by virtue of his absolute control of the corporation, the obtaining of which was required by him

as a condition to any advance. The fact that he subsequently evidenced his faith by the large sums of money expended, speaks loudly of his confidence in the property and his willingness to speculate on a fortunate outcome. Viewed as a contract, dealing with
90 a speculative venture, its terms construed as a stock purchase evidence no folly upon his part—nor are they inequitable or unusual.

The appellants lay much stress upon a resolution of the stockholders adopted in February 1904, wherein the thanks of the company were extended to Mr. Moneuse for his liberality in making the loan necessary to secure the discharge in bankruptcy. It appears, however, that at the same meeting a resolution dealing with the subject of the transfer of the property of the West Virginia corporation to the Arizona corporation was introduced, which contained a recitation of the same loan and provided that the property should be transferred to the Arizona corporation upon condition that "the said Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of that company to Elie J. Moneuse which is above referred to." To the part of the resolution relative to the loan and the refund of the money advanced by Mr. Moneuse protest was entered, but the resolution carried. Subsequently and at the next annual stockholders' meeting that portion of the resolution making use of the word "loan" and subjecting the Arizona company to the payment of it was expressly rescinded, the recitation being that "it is deemed expedient * * * owing to a misunderstanding on the part of some of the stockholders that" those portions be withdrawn and rescinded. In the light of this action with respect to the conditions under which the property was to pass from the West Virginia company to the Arizona cor-
91 poration the general resolution of thanks for the loan passed prior thereto though itself unrescinded can have but little weight as a practical construction of the contract favorable to appellants. Mr. Moneuse's explanation of his consent to the rescision of that portion of the resolution claimed to be a practical construction of the contract is that it was done at his own suggestion because certain stockholders pointed out that they felt that he should not claim any moneys advanced to the company until the expiration of the three years called for by the contract referred to and that it would in their opinion unfairly place the new company at his mercy if the conveyance from the old company to the new company should be made upon the basis of the recognition of a debt then immediately enforceable. He says he told these gentlemen that as he meant to live up to his contract he was perfectly content in order to show them that he was acting in entire good faith, not to press the claim until the three year period had expired and he therefore caused the rescision of the resolution. He further says that so far as he was aware until the suit was commenced there was no suggestion that his advances were not loans.

We find great difficulty in reconciling this explanation with other portions of Mr. Moneuse's deposition. In exhibit "A" attached to the deposition is his statement as treasurer for the year ending April,

1905, wherein appears the item "By allowance made by E. J.
92 Moneuse for transferring to him 99,002 shares of the stock of the Copper Belle Mining Co. of Arizona, $40,000." Of this item Mr. Moneuse has the following explanation: "This * * * allowance of $40,000 which appears upon Exhibit A and which I made because it was urged by the minority stockholders that I ought to take the majority stock transferred to me at some substantial figure and to that extent ought not to consider the sums paid by me as advances and loans to the company. It was thereupon agreed that I should call this sum $40,000. I therefore made this credit for this reason and all stockholders were content that the sum of $40,000 should be regarded as paid for the stock and that the rest of the sums paid by me should be treated as advances and loans. This was an oral agreement made between me and the rest of the stockholders after I extricated the company from bankruptcy. This concession was made by me for the sake of harmony and peace for the future welfare of the company."

It would seem that it could be hardly possible that he conceded to the stockholders $40,000 of such advances as a purchase price of stock without being in some way informed that there was a contention as to whether any part of the advances were loans. If he knew that such contention existed it is significant that during all the years following advancing as he did, large sums from time to time, there is no subsequent reference in the minutes of the stockholders' meetings of either the West Virginia or Arizona corporation, nor
93 in the motions adopting the various treasurer's reports acknowledging the advances as loans.

The construction of the contract by the trial court declining to give to the word "advance" the meaning of "loan" was correct. The judgment of the trial court is affirmed.

ERNEST W. LEWIS,
Associate Justice.

We concur:

EDWARD KENT,
Chief Justice.

FLETCHER M. DOAN,
Associate Justice.

EDWARD M. DOE,
Associate Justice.

And on the same day to-wit: the twenty-seventh day of March, 1911, being one of the regular juridical days of the January Term of said Court, 1911, the following order and judgment, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

94 No. 1149.

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Defendant; JAMES B. RILEY, Intervenor and Appellee.

This cause having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It is ordered that the judgment of the District Court be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the appellee herein do have and recover of and from the appellants herein his costs in this court, taxed at twenty-seven and 75/100 ($27.75) Dollars, together with his costs in the court below in thi scause incurred, and accruing costs in this court.

And on to-wit: the tenth day of April, 1911, came the appellants by their attorneys and filed in the clerk's office of said court in said entitled cause their certain Motion for Rehearing in words and figures following, to-wit:

95 In the Supreme Court of the Territory of Arizona.

WILLIAM A. PAINE et al., Co-partners Doing Business under the Firm Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY, Defendant; JAMES B. RILEY, Intervenor and Appellee.

Come now the appellants in the above entitled cause and moves this honorable court to grant a rehearing of said cause for the following reasons:

I.

Because this court in holding that the trial court had the right and power in its discretion to set aside its judgment upon motion made more than five days after its rendition (in this case thirty days) and having set it aside, had the power to permit Riley to present and press his motion for leave to intervene, omitted to note that the only ground upon which the setting aside of the judgment is asked, is in order to permit Riley to intervene. It would, therefore, seem that to set aside a judgment for no other purpose than to permit of an intervention is to nullify the statute which creates the right to intervene coupled with the condition that it be exercised "before the trial."

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II.

The court entirely ignored and failed to express any opinion upon appellants' second assignment of error of the trial court in permitting the intervenor Riley to read as a part of his testimony in the case an alleged stenographic report of a stockholders' meeting of the Copper Belle Mining Company held January 24th, 1908, and after the commencement of this action.

III.

The opinion of the court we think does violence to the term used by the parties to the contract attached to the intervenor's pleading, in construing the terms "advance," "provide and supply" to mean "payment of a purchase price" instead of a "loan to be unpaid."

KIBBEY, BENNETT & BENNETT,
Attorneys for Appellants.

And on to-wit: the fourth day of May, 1911, being one of the regular juridical days of the January term of said court, 1911, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

97 At this day, it is ordered by the Court that the motion for rehearing filed herein by appellants be submitted.

And on to-wit: the sixth day of May, 1911, being one of the regular juridical days of the January term of said court, 1911, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, it is ordered by the Court that the Motion for Rehearing filed herein by appellants and heretofore submitted, be, and the same is hereby, denied.

And on the same day to-wit: the sixth day of May, 1911, being one of the regular juridical days of the January term of said court, 1911, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

At this day comes Walter Bennett, Esq., for appellants herein, in open court, and gives notice of appeal to the Supreme Court of the United States from the judgment of this Court, and

Upon motion of Walter Bennett, Esq., it is ordered that the appeal be, and the same is hereby allowed, and the amount of
98 the cost bond be fixed in the sum of One Thousand ($1,000) Dollars.

And on to-wit: the ninth day of October, 1911, there was filed in the clerk's office of said court in said entitled cause, a certain Statement of Facts, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Defendant and Appellee.

Statement of Facts.

This cause having been brought to this court by appeal from the final judgment of the District Court of Pinal County, Arizona, in this cause, and the judgment of the said District Court of Pinal County having been affirmed by this court, and the appellant herein having prayed an appeal of this cause to the Supreme Court of the United States, which appeal has been duly allowed by this court, this court does now make and file herein the following state-
99 ment of the facts in said cause, viz:

On, and prior to June 4th, 1903, the Copper Belle Mining Company was a corporation organized under the laws of the State of West Virginia, capitalized in the sum of $1,000,000, divided into 200,000 shares of the par value of $5.00 per share, and was operating some mining property in Cochise County in the Territory of Arizona, which operations had resulted in involving the corporation in a large amount of indebtedness, aggregating about $45,000, and was without means to liquidate its indebtedness or to prosecute its mining business. As a result thereof the corporation, prior to June 4th, 1903, had been adjudged a bankrupt by the District Court of Cochise County, Arizona, and a trustee in bankruptcy of the property and assets of the corporation had been appointed by said court.

At this time and for some time prior thereto the intervenor James B. Riley, was and had been the President and Director of the company, and George E. Crawford was its secretary and treasurer, and a member of the board of directors and they, together with Balthazard Brunner and J. Adam Brunner, and their friends, owned and controlled a majority of the stock of the company.

There was pending litigation in the courts of New York between the stockholders of the company respecting the issuance to the above named parties of a large amount of stock, and the corporation was about to lose its mining property, through said bankruptcy proceedings.

100 At this juncture the parties above named entered into a contract in writing with one Elie J. Monceaux who was a small stockholder in said corporation owning one thousand shares which contract is in the words and figures following:

This agreement, Made and entered into, in triplicate, this 4th day of June, 1903, by and between James B. Riley, George F. Crawford, parties of the first part, Balthasard Brunner and J. Adam Brunner, parties of the second part, all of the Borough of Manhattan, in the City, County and State of New York, and Elie J. Monceaux, of the same place, party of the third part, witnesseth:

Whereas, the parties of the first and second parts hereto, together with certain of their friends are the owners of more than a majority of the total authorized capital stock of The Copper Belle Mining Company, a corporation organized under the laws of the State of West Virginia, with a capital stock of One Million Dollars, divided into two hundred thousand shares of the par value of Five Dollars each, and whereas, the party of the third part, together with certain of his friends, are minority stockholders in the said company, and

Whereas, there are divers liens, judgments and claims of record filed against the said Copper Belle Mining Company, in the Territory of Arizona, by creditors of the said company, which said liens, judgments and claims amount in the aggregate to the sum

101 of about forty-five thousand ($45,000) Dollars, and

Whereas, an action is pending in the Supreme Court of the state of New York, between the parties hereto, in which action the sale and disposition of certain shares of stock in said Copper Belle Mining Company, amounting in the aggregate to about eighty-five thousand (85,000) shares are enjoined and restrained, and

Whereas, the party of the third part, as the plaintiff in the said action, has demanded an accounting from the parties of the first and second parts, and certain other persons who are enjoined as defendants in said action, of and concerning certain matters and things connected with the property and administration of the affairs of the said Copper Belle Mining Company, as more fully appears in the complaint in the said action, and

Whereas, it is, in the judgment of all the parties hereto, to the best interest of the said Copper Belle Mining Company, and the stockholders thereof, that an amicable, just and equitable adjustment and settlement should be made of the various matters and things which are in controversy in the said action, and

Whereas, said mining company has been adjudicated a bankrupt by the U. S. District Court for the District of Arizona, and one A. H. Emanuel has been appointed Trustee in Bankruptcy of said company's property, and

Whereas, the said Copper Belle Mining Company, or said

102 trustee is now the owner and holder of certain mining claims in the said Territory of Arizona, which said claims are, in the opinion of all the parties hereto, of great value, and should yield large profits to the said company, if the mine are properly worked and developed, and

Whereas, the present financial condition of the said company is such that it is impossible of the said claims to be worked and developed, and the said company is in great danger of losing the same, unless money is raised to work the right, title and interest of the said company, in and to the same.

Now, therefore, in consideration of the premises, of the sum of One Dollar, by each of the parties hereto to the other in hand paid, and of good and valuable considerations, the receipt of all of which is hereby acknowledged, and of the mutual covenants and agreements which are herein contained, the parties hereto do hereby covenant and agree to and with each other as follows:

First. The party of the first part shall provide and supply, on or before the 20th day of June, 1903, a sufficient sum of money to pay off and discharge all of the just debts due or owing by the said company and in addition thereto, as required from time to time, sufficient funds to enable the said company to work and operate the claims and mines which have been heretofore operated by it, and agrees to apply the said moneys to the payment and discharge
103 of the said debts, and for a period not exceeding three years, to the working and operation of the said claims until the said claims shall yield sufficient returns to pay for working and operating the same; procuring said Bankruptcy and other legal proceedings against said company to be dismissed and terminated, and said company to be restored to the title and possession of its property, free and clear except as to alleged mortgages made to Gleeson and Costello, now in litigation; said funds to be so applied as soon as all the terms and conditions of this agreement shall have been fully carried out, and complied with by the parties of the first and second parts, and the actions of the parties of the first and second parts in carrying out and complying with the same shall have been in all respects, as far as necessary for the purposes hereof, ratified, confirmed and adopted as and for the act of the said Copper Belle Mining Company, by the directors and stockholders thereof.

Second. The parties of the first part hereby agree with the party of the third part, that the parties of the first part will procure the officers and directors of the said Copper Belle Mining Company to permit a complete examination of the books of the said company to be made by any reputable accountant or accountants nominated by the party of the third part, said examination of the books to be made at the office of the company, No. 12 John Street, Borough of Manhattan, New York City, with the provision that the Sec-
104 retary of the company and his bookkeeper may be present at said examination; the said secretary and bookkeeper and the officers of the company will render every assistance and facilitate all matters in connection with such examination of said books; that said accountant will report to the parties hereto, in detail, the exact condition and affairs of said company. It is especially agreed that the said accountant shall particularly inquire into, examine and report upon all of the affairs, facts and conditions of said company which are in issue in the action which is above referred to, in so far as the same may be properly passed upon by him, and that the parties of the first and second parts will give the said accountant, in making said examination, every aid and facility in their power.

Third. Upon the receipt of the report of the said accountant, all of the parties hereto agree to return to the Treasury of the said Company, any and all shares of the capital stock thereof, which may be found, as hereinafter provided, to be owing by them, or any of them, to the said company, or to have been issued (not including stock for commissions for sales of capital stock) without a good and sufficient legal consideration, and the parties of the first and second parts agree to return to the treasury *of the first and second parts agree to return to the treasury* of said company, shares of the stock hereof which shall be equal to the purchase price paid therefor to the sum
105 or sums of money, of any, as may be found by the said accountant to be due and owing by them to the said company, with interest up to the date of said report.

Fourth. The parties of the first and second parts agree that there shall be in the treasury of the said company and unissued or owned by it, immediately after the report of the said accountant has been made, including stock that may be returned under Paragraph Third hereof, fifty (50 *per cent*) per cent of the total authorized capital stock of the said company, and that if less than fifty (50 *per cent*) per cent shall then be in the said treasury, that then, and in that event, the said parties of the first and second parts will, without further consideration, return and transfer out of and in proportion to their respective individual holdings, whether in their names or in the names of others for them, to the said company, enough of the capital stock thereof, which shall then be held by them, to make up and complete fifty per cent.

Fifth. The parties of the first part hereby stipulate and agree to procure as soon as may be practicable, after the execution of this agreement, the resignations of the present President and Treasurer, and the present Board of Directors of said company, and all of the parties hereto agree that a stockholders' meeting shall be called as soon as may be practicable, for the purpose of electing a new Board of Directors, and that the vacancies which may be caused by the
106 resignation of the said officers of the said company shall be filled as soon as may be practicable by the said Board of Directors.

Sixth. It is further agreed by all the parties hereto, that the said company shall issue and deliver to the party of the third part, the treasury shares of the capital stock of the said company which shall be equal to fifty (50 *per cent*) per cent of the total authorized capital stock of the said company, provided for in the fourth clause hereof, less the amount of the holding of the party of the third part, in consideration of the advance, by the party of the third part, of the moneys which are to be paid and advanced by him, as above provided for, and without further consideration whatsoever.

Seventh. It is further stipulated and agreed by and between the parties hereto, that the parties of the first part shall have the right to nominate one of the directors, and that the parties of the second part shall have the right to nominate another one of the directors upon the Board, which nominees shall be chosen to fill the place of the directors now in office and that the party of the third part shall have the right to nominate three of the directors upon the said Board,

and each of the parties hereto agree to vote all the stock which is now or shall at the date of the said election be held by him, or them respectively, in favor of the directors which shall be nominated.

Eighth. It is further stipulated and agreed by the parties of the first and second parts, that the party of the third part
107 shall nominate a president and treasurer of his own choice, of the company, and that all of the parties hereto will procure the election of such persons, as the party of the third part may nominate for the said offices.

Ninth. The party of the third part hereby agrees to elect and retain in office, George E. Crawford, as secretary of said company, and James B. Riley, as directors and vice-president for the term of one year.

Tenth. It is further agreed by the parties hereto that such resolution as may be necessary or proper to carry out and have performed on the part of the parties hereto, or on the part of the said Copper Belle Mining Company, the terms and provisions of this agreement, and all of them, to the true intent and purpose thereof, shall be submitted to and adopted by the new Board of Directors, and by the stockholders of the said company, at the meetings of the said Board of Directors and stockholders to be forthwith called for that purpose, and each of the parties hereto hereby covenants and agrees that he will give his best effort, aid and endeavor, and his votes, to procure the adoption of the said resolution.

Eleventh. The party of the third part hereby covenants and agrees that when all of the terms and conditions of this agreement shall have been fully performed and carried out by the parties of the first and second parts and by the said new officers and new Board of Directors of the said Company, who shall have been duly
108 elected, and when all of the terms of this agreement shall have been fully confirmed, ratified and adopted, by the said directors, and by the stockholders of the said Copper Belle Mining Company, as and for the acts of said company, and then the party of the third part will deliver to the parties of the first and second parts, a consent to the discontinuance of the action which is now pending in the Supreme Court in the county of New York and which is above referred to, and will also deliver to the parties of the first part a consent to vacate the injunction order which has been entered in the said action.

Twelfth. It is further agreed that when the number of shares to be transferred to the treasury of the Copper Belle Mining Company by the parties of the first and second parts hereto, shall have been ascertained, as hereinbefore prescribed a stipulation shall be signed by the attorneys for the parties hereto, the parties to said action, and an order entered therein, providing that the injunction entered in said action be vacated, as to all parties to said action, as far as it refers to the stock of the Copper Belle Mining Company deposited with the Knickerbocker Trust Company under an agreement between the parties of the first and second parts hereto and John Gleason, and that the said Knickerbocker Trust Company shall thereupon forthwith transfer, release or cancel the said seventy-seven

hundred (7,700) shares now standing in the name of said
109 Gleeson, and also the shares of stock as herein required, and that said shares shall be transferred to the Treasury of the Copper Belle Mining Company, and the parties of the first part and second part shall enter into the possession of such remaining shares so deposited as they may severally be entitled to, and the parties of the first and second part hereby agree to, at the time of the execution of the stipulation hereinbefore referred to, execute such consent or order upon the said Knickerbocker Trust Company, as may be required or advised for the purpose of such transfers.

Thirteenth. The report of the accountant above directed shall be submitted to Henry J. Mayer, James F. Mack and Joseph N. Goldbacher, who shall thereupon pass and decide the number of shares to be transferred to the treasury of the Copper Belle Mining Company, by the parties hereto, as above specified. Should said Henry J. Mayers, James F. Mack and Joseph N. Goldbacher disagree upon any question or matter connected herewith, the point in disagreement shall be submitted to some disinterested attorney, selected by the majority of the said three, and the decision of the said nominee upon such point or points shall be final.

This agreement shall bind all of the parties hereto, their personal representatives and assigns.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

JAMES F. MACK for James B. Riley.
GEORGE E. CRAWFORD. [L. S.]

110 In the presence of
JOSEPH N. GOLDBACHER as to
BALTHAZARD BRUNNER,
Per JEAN ADAMS BRUNNER, *Att'y.*
JEAN ADAMS BRUNNER. [L. S.]
HENRY J. MAYER for Elie J. Moneuse. [L. S.]

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared James B. Riley, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

[SEAL.] JAMES F. MACK,
Notary Public, County of New York, ss:

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared George E. Crawford, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

[SEAL.] JAMES F. MACK,
Notary Public, County of New York, ss:

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared J. Adam Brunner, to me known and known to me to be
111 the individual who executed the foregoing instrument as the attorney for Balthazard Brunner, and the said J. Adam Brunner, being by me first duly sworn, did depose and say that he holds a duly executed power of attorney from the said Balthazard Brunner whereby he, the said J. Adams Brunner, is authorized and empowered to execute, acknowledge and deliver the said agreement, for and in the name, place and stead of the said Balthazard Brunner, and the said J. Adam Brunner did thereupon acknowledge to me that he had executed the same in the name of and as such attorney for said Balthazard Brunner, for the uses and purposes which are therein set forth.

[SEAL.] JOSEPH A. FARLEY,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared J. Adam Brunner, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

[SEAL.] JOSEPH A. FARLEY,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
County of New York, ss:

On this 4th day of June, 1903, before me personally appeared Elie J. Moneuse, to me known and known to me to be
112 one of the individuals described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

[SEAL.] HENRY C. MAYER,
Notary Public, N. Y. Co., No. 47.

This contract appears to have been carried out in good faith by both parties to it. James B. Riley and his friends resigned their respective offices in the corporation, and the friends and nominees of Mr. Moneuse were elected in their stead and took charge and control of the affairs of the corporation. Sufficient stock (99,002 shares) of the company was turned over to Mr. Moneuse to constitute him the owner of a majority of the stock of the company, and Mr. Moneuse provided, supplied and advanced to the company all the money necessary to pay the debts of the company (except the mortgages excepted in the contract), procured the dismissal of the adjudication of bankruptcy against the company and the restoration to the company of the title and possession of its mining property, and provided, supplied and advanced to the company all the funds necessary to work and operate the mines of the company for three years.

After the making of the contract above set forth, to-wit: on February 13th, 1904, the Copper Belle Mining Company of West Virginia was reorganized into the Copper Belle Mining Company
113 of Arizona, a corporation organized under the laws of Arizona, with the same capitalization as the old company. All of the property of the old company was transferred to the new company, and the stock of the new company was issued to the stockholders of the old company to the amount of the stock in the old company held by each, and it does not appear that the relations of the parties to this controversy were at all changed by such reorganization and transfer.

No report of receipts or disbursements were made by Moneuse to either the directors or stockholders during the years 1903 and 1904, nor until the annual stockholders' meeting of 1905.

Then and thereafter at each of the annual stockholders' meetings of the company held in the years 1905, 1906, and 1907, said Moneuse rendered itemized reports in writing of his receipts and disbursements on behalf of the company.

These reports show disbursements by Moneuse to April 30th, on behalf of the corporation of $233,996.95, and receipts or credits of $109,897.10, which latter sum is shown to include a credit of $40,000 given by Mr. Moneuse to the corporation on account of the transfer to him of 99,002 shares of the capital stock of the company. The final report of Mr. Moneuse to the stockholders' meeting in 1907, shows a total disbursements by Mr. Moneuse over and above all receipts and credits including the $40,000 above mentioned, of a sum
in excess of $265,416.72 for which the note hereinafter men-
114 tioned was given.

At a stockholders' meeting of the Copper Belle Mining Company of West Virginia held on February 29th, 1904, a resolution was adopted which after referring by preamble to the advances made by Mr. Moneuse to the company, under the contract above mentioned, directs the transfer of all the property of the West Virginia corporation to the Arizona corporation upon certain conditions, one of which is as follows:

"Second. The Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of this company to Elie J. Moneuse which is above referred to."

At a subsequent meeting of the stockholders of the West Virginia Company held May 9th, 1904, that portion of the preamble contained in paragraph 6 thereof, characterizing the advance as a loan, and the above quoted portion of the resolution was "withdrawn and rescinded" by the unanimous vote of all of the stockholders present, the motion to withdraw and rescind being made at the suggestion of Mr. Moneuse who voted his stock in favor of the motion. That subsequent to the rescission of said resolution, there is no action of record in the minutes of the corporation acknowledging the advances of said Moneuse as loans.

(A copy of the minutes of these and all other stockholders' meeting of the corporation so far as they affect the matters in controversy, is attached hereto as Exhibit "A" and made a part of these findings.)

115 On July 17th, 1907, Elie J. Moneuse assigned to Duparquet, Huot & Moneuse, a New York corporation, all sums of money then due or to become due to him from the Copper Belle Mining Company of Arizona, to-wit: $265,416.72, and on July 22nd, 1907, the note for the above amount sued on in this case was executed by the Copper Belle Mining Company of Arizona and under its seal by Peter Quinn, its president and E. J. Moneuse its Secretary and Treasurer.

That the sole consideration for said note was the moneys provided and supplied or provided, supplied and advanced under said contract of June 4th, 1903.

That thereupon the said Duparquet, Huot & Moneuse endorsed the said note in blank and delivered the same to the plaintiffs in this case and that on July 30th, 1907, the said note was duly presented to the defendant, Copper Belle Mining Company of Arizona, at its office in the City of New York, and payment thereof demanded by a Notary Public of the State of New York at the request of National Copper Bank of New York and that payment thereof was thereupon refused and that the said note has not been paid or any part thereof.

"EXHIBIT A."

Minutes of a Special Meeting of the Stockholders of the Copper Belle Mining Company, held at Tuxedo Hall, Fifty-ninth Street and Madison Avenue, in the Borough of Manhattan, in the City of New York, on the 29th day of February, 1904, in pursuance of a written notice sent by the Secretary of the Company to all of the

116 stockholders of record on February 26th, 1904.

Meeting was called to order at 2:45 P M. with the President, Mr. Peter Quinn, in the chair.

The Chairman, Mr. Quinn, stated that the object of the meeting was to ratify two resolutions which would later be read by the Secretary of the Company to the Stockholders assembled.

The Secretary then called the roll, and as a majority of the stock of the Company was shown to be present either in person or by proxy, the meeting proceeded to the transaction of business.

The Chairman thereupon instructed the Secretary to proceed with the reading of Resolution No. 1 to the assembled stockholders.

The Secretary then read the said resolution to the stockholders, a copy of which is annexed hereto.

Resolution No. 1.

On motion duly made by Mr. Henry J. Mayer, seconded by Mr. Henri Sturm, and carried, the following resolution was duly adopted:

1. Whereas, this company, the Copper Belle Mining Company, organized under the Laws of the State of West Virginia did, on or about the Fourth day of February, 1902, execute and deliver to Martin Costello, a certain mortgage for $15,100, upon the following

mining claims located in Cochise County, Arizona, to-wit:
116½ The "Oak Grove," the "Catherine A," the "Charleston," the "Independence," the "Copper Belle," the "Elizabeth," the "Durand," the "Dandy," the "Empire" and the "Joe," and

2. Whereas, this Company did on or about the 4th day of February, 1902, execute and deliver to John Gleeson, a certain other mortgage for $53,000, upon said mining claims which are above enumerated, and

3. Whereas, this Company is now the owner of the said mining claims, which are now subject to the two mortgages which are above referred to, and

4. Whereas, this Company is now the owner and holder of a certain mortgage for $6,000, bearing date the 10th day of March, 1902, which said mortgage was executed and delivered to this Company by the San Remo Copper Mining Company, and covers the following mining claims, situated in Cochise County, Arizona, to-wit: The "Lizzie," the "Chance" and the "Independence" mining claims, and

5. Whereas, this Company, the Copper Belle Mining Company, of West Virginia, was on the 28th day of February, 1903, adjudged a bankrupt in the District Court of the First Judicial District of the Territory of Arizona, and was and continued to be such bankrupt until its discharge in bankruptcy on the 18th day of February, 1904, as hereinafter set forth, and

6. Whereas, Elie J. Moneuse, of the Borough of Manhattan, in the City of New York, has loaned and advanced to this Company, the said Copper Belle Mining Company, of West Virginia,
117 certain sums of money for the purpose of compromising and discharging debts due by this Company, of effecting and carrying out a composition in bankruptcy with the creditors of this Company, and of defraying and discharging the expenses of the proceedings wherein this Company was adjudged a bankrupt, including counsel fees in such proceedings, and for litigation incident thereto, and

7. Whereas, the said Elie J. Moneuse has, through his said aid and assistance, enabled this Company to effect a composition in bankruptcy with its creditors, and

8. Whereas, three of the directors of this Company have just returned from Tuscon, Arizona, where they have thoroughly investigated the affairs of this Company and have succeeded through the assistance of said Elie J. Moneuse in having it discharged in bankruptcy by an order of the District Court of the Territory of Arizona, for the first Judicial District, by order entered on the 18th day of February, 1904, and

9. Whereas, this Company did, on the 20th day of February, 1904, resume the mining operations which it had been conducting prior to its said adjudication in bankruptcy, and

10. Whereas, because of its said adjudication, and because of the facts which are above recited, the credit and financial standing of this Company have been and now are very greatly impaired and weakened, and

11. Whereas, this Company has heretofore become bound
118 by and has assumed obligations under certain contracts, which said obligations would prevent the conduct in a successful and financially profitable manner, of the mining operations in which this Company, the Copper Belle Mining Company, of West Virginia, is now engaged, or might hereafter become engaged, and

12. Whereas, the "Copper Belle Mining Company of Arizona" has been duly incorporated under the laws of the Territory of Arizona, with a capital stock of One Million dollars, consisting of Two hundred thousand shares of the par value of Five dollars each, and

17. Whereas, the business and operations which are now being carried on and conducted by this Company, the Copper Belle Mining Company of West Virginia, may be legally carried on and conducted by the said "Copper Belle Mining Company of Arizona," and

14. Whereas, the said "Copper Belle Mining Company of Arizona" has offered to take over and acquire all of the right, title and interest of this Company, the Copper Belle Mining Company of West Virginia, in and to the ten mining claims, and each of them, which are first above enumerated, and in and to the mortgage which was given to this company, the Copper Belle Mining Company of West Virginia, by the San Remo Copper Mining Company, as is above set forth, and in and to all of the right, title and interest and good will of this company, the Copper Belle Mining Company of West Virginia, in or to any property, assets, business or operations,
119 of any kind whatsoever, to it belonging, and located in the said Territory of Arizona, upon the terms and conditions which are hereinafter set forth, and

15. Whereas, the stockholders of this Company, the Copper Belle Mining Company, of West Virginia, consider it to the best interests of themselves, and of the said Copper Belle Mining Company of West Virginia, that the said offer of the Copper Belle Mining Company of Arizona be accepted, upon the terms and conditions hereinafter stated.

Now, therefore, be it resolved:

That the directors of this Company be, and they hereby are authorized, empowered and requested to have this Company, the Copper Belle Mining Company, of West Virginia, sell, assign, transfer and set over to the said Copper Belle Mining Company of Arizona, all of the right, title and interest of this Company, the Copper Belle Mining Company of West Virginia, in and to the said mining claims, the "Oak Grove," the "Catherine A," the "Charleston," the "Independence," the "Copper Belle," the "Elizabeth," the "Durand," the "Dandy," the "Empire," and the "Joe," situated in Cochise County, Arizona, and all of the right, title and interest and good will of this Company, the Copper Belle Mining Company of West Virginia, in and to any and all property and assets of every kind and description whatever, to it belonging and situated in the Territory of Arizona, and in and to the mortgage of the San Remo Copper Mining Company for $6,000, which is above referred to; it
120 being however especially understood and agreed that the said sale, transfer and assignment shall be upon and subject to the following terms and conditions:

First. The mining claims which are above enumerated shall be conveyed to the said Copper Belle Mining Company of Arizona, subject to the mortgages to Martin Costello for $15,000 and to John Gleeson for $53,000, which are above referred to.

Second. The said "Copper Belle Mining Company of Arizona" shall assume and discharge the indebtedness of this Company to Elie J. Moneuse which is above referred to.

Third. The said Copper Belle Mining Company of Arizona shall, immediately upon the sale and assignment to it, of the mining claims, property and assets of this Company, the Copper Belle Mining Company, of West Virginia, which are above referred to, and without further consideration, cause to be issued and delivered to each of the stockholders of this Company, the Copper Belle Mining Company, of West Virginia, as many of the shares of the capital stock of the said Copper Belle Mining Company of Arizona, of the par value of Five dollars each, and full paid and non-assessable, as each of said stockholders shall then respectively hold of the capital stock of, and have standing in his or her name upon the books of this Company, the Copper Belle Mining Company, of West Virginia; it being, however, especially understood and agreed that no shares of the capital stock of the said Copper Belle Mining Company
121 of Arizona shall be so issued or delivered to any stockholder of this Company, the Copper Belle Mining Company, of West Virginia, until such stockholder shall have surrendered the certificates covering and representing his said stock in this Company, the said Copper Belle Mining Company, of West Virginia, to the proper officer of this company for cancellation.

And be it further resolved:

That the Board of Directors of this Company, the Copper Belle Mining Company, of West Virginia, be, and they are hereby authorized, empowered and requested to cause all things to be done which may be proper or necessary to be done, and all conveyances, assignments, agreements or other instruments in writing to be made and executed and entered into by this Company, or between this Company, the Copper Belle Mining Company of West Virginia and the said Copper Belle Mining Company of Arizona, as may be proper or necessary to be executed or entered into, in order to carry out all the provisions of this resolution according to the true intent and purport thereof.

Mr. James F. Mack, a stockholder, then entered a protest against the validity of the meeting on the grounds, that it was not legally called, as insufficient notice was given, and that the object of the meeting was not stated in said notice. That the resolution as read by the Secretary to the meeting was of a conglomerate nature.

Mr. Mack then entered a further protest against that part
122 of the resolution relative to the refunding to Mr. Elie J. Moneuse of certain moneys advanced by Mr. Elie J. Moneuse to purchase the outstanding indebtedness of the Copper Belle Mining Company, of West Virginia, for which a composition was effected with the creditors and a discharge in bankruptcy secured for the Company, in pursuance of an agreement made on the 4th day of

June 1903, by and between James B. Riley, George E. Crawford, parties of the first part, Balthazard Brunner and J. Adam Brunner, parties of the second part, and Elie J. Moneuse, party of the third part, which agreement was ratified and confirmed by the stockholders of the Copper Belle Mining Company on the 12th day of June, 1903.

In order that the stockholders of the Copper Belle Mining Company should fully understand the questions involved, the Chairman, Mr. Quinn, asked Mr. Mack to kindly read the entire agreement made on the 4th day of June, 1903, which Mr. Mack did.

Mr. Henry J. Mayer, a stockholder of the Copper Belle Mining Company discussed section "sixth" of the said agreement, and brought the same to the attention of the stockholders, as well as fully explaining that it was the intention of the present Board of Directors to see that the interests of the shareholders would be fully protected.

The following is a copy of Section "Sixth" of the agreement above referred to:

"Sixth. It is further agreed by all the parties hereto, that the said Company shall issue and deliver to the party of the third
123 part, the treasury shares of the capital stock of the said Company which shall be equal to fifty per cent (50%) of the total authorized stock of the said Company, provided for in the Fourth clause hereof, less the amount of the holding of the party of the third part, in consideration of the advance by the party of the third part, of the moneys which are to be paid and advanced by him, as above provided for, and without further consideration whatsoever."

On motion duly made by Mr. George P. Ahner, and seconded by Mr. Browne, that two tellers be appointed by the Chairman, and that the meeting proceed to take a vote on Resolution No. 1.

This motion was duly put and carried.

The Chairman thereupon appointed Mr. George P. Ahner and Mr. Thomas Browne, the tellers to count and register the votes cast.

The tellers then duly proceeded to count the vote for Resolution No. 1, and after completing the same, submitted it to the Chairman, together with their sworn report, which is hereto attached.

The Chairman then announced to the meeting the result of the vote as cast, to-wit:

124,716 votes for the resolution, and

38,983 votes against the resolution.

Mr. Quinn, the Chairman, then declared the resolution adopted.

The Chairman, Mr. Quinn, then presented to the meeting
124 the following motion:

Whereas, the financial condition of the Copper Belle Mining Company of West Virginia, at the time Mr. E. J. Moneuse was requested to assist the Company to have its property restored to them, was a bankrupt.

Be it resolved that the sincere thanks of this Company be extended to Mr. E. J. Moneuse for his magnificent liberality in making the loan necessary to secure the discharge in bankruptcy of the said

Company and securing to it, its property, giving every stockholder in this Company a chance to square with each other, whatever success may ultimately accrue to them, in its operation when no one else would entertain a proposition to, in any way, help this Company.

The Chairman requested one of the stockholders to put the motion before the house.

The motion was duly presented by Mr. Henri Sturm, and seconded by Mr. George P. Ahner, and unanimously carried.

PETER QUINN,
Chairman.

GEORGE E. CRAWFORD,
Secretary.

Minutes of the Annual Meeting of the Stockholders of the Copper Belle Mining Company of West Virginia, held at Lyric Hall, No. 725 Sixth Avenue, in the Borough of Manhattan, in the City of New York, on the 9th day of May, 1904, in pursuance of a published notice in the New York Times, under dates of April 15th and
125 22nd, 1904, and notice duly mailed to each stockholder of record by the Secretary of the Company.

Meeting called to order at 2:30 P. M., with the President, Mr. Quinn, in the Chair.

The Secretary then called the roll, and as a majority of the stock of the Company was shown to be present, either in person or by proxy, the meeting proceeded to the transaction of business.

New Business was then in order, and in accordance therewith, the following resolution was handed up, and the Chairman instructed the Secretary to read it to the assembled stockholders, of which the following is a copy, and known as Resolution No. 1.

Resolution No. 1.

"Whereas, the Copper Belle Mining Company of West Virginia held a Special Meeting of its stockholders at Tuxedo Hall, in the Borough of Manhattan, in the City of New York, on the 29th day of February, 1904, at which meeting two resolutions were passed, and

Whereas, it is deemed expedient by the Board of Directors, owing to a misunderstanding on the part of some of the stockholders of the Copper Belle Mining Company, that a certain part of Resolution No. 1 should be withdrawn and rescinded.

Now, therefore, be it resolved:

That paragraph "Second" of said first resolution which was duly passed and ratified by the stockholders present at said meet-
126 ing, namely:

"That the said Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of this Company to Elie J. Moneuse", and including paragraph marked "Six" of the recitals of said clause, is herewith withdrawn and rescinded by the stockholders present at this meeting.

The following is a copy of paragraph "Six" of the recitals of said clause, hereinbefore referred to:

"Whereas, Elie J. Moneuse, of the Borough of Manhattan, in the City of New York, has loaned and advanced to this Company, the said Copper Belle Mining Company, of West Virginia, certain sums of money for the purpose of compromising and discharging debts due by this Company, of effecting and carrying out a composition in bankruptcy with the creditors of this Company, and of defraying and discharging the expenses of the proceedings wherein this Company was adjudged a bankrupt, including counsel fees in such proceedings, and for litigation incident thereto."

On motion duly made by Mr. Gayley and seconded by Mr. Ahner, the same was put to a vote and all stockholders and proxies present at said meeting voted for the ratification of said Resolution No. 1, excepting Mr. Thomas Browne, who voted nay, and who desired to have his protest recorded in the minutes of the meeting.

The Chairman thereupon announced that the resolution was adopted.

127

PETER QUINN,
Chairman.

GEO. E. CRAWFORD,
Secretary.

Minutes of a Special Meeting of the Board of Directors of the Copper Belle Mining Company, a West Virginia corporation, held in the City of New York, on the 30th day of June, 1904.

Present Messrs. Peter Quinn, Elie J. Moneuse, Henry J. Mayer and George E. Crawford.

The Secretary announced that a quorum was present and Mr. Quinn took the chair.

Upon motion duly made, seconded and carried, the following resolution was unanimously adopted:

Whereas, this Company, the Copper Belle Mining Company, of West Virginia, was on the 28th day of February, 1903, adjudged a bankrupt in the District Court of the First Judicial District of the Territory of Arizona, and was and continued to be such bankrupt until its discharge in bankruptcy on the 18th day of February, 1904, as is hereinafter set forth, and

Whereas, Elie J. Moneuse, of the Borough of Manhattan, in the City of New York, has loaned and advanced to this Company, the said Copper Belle Mining Company, of West Virginia, certain sums of money for the purpose of compromising and discharging debts due by this Company, of effecting and carrying out a com-

128 position in bankruptcy and discharging the expenses of the proceedings wherein this Company was adjudged a bankrupt, including counsel fees in such proceedings, and for litigation incident thereto, and

Whereas, the said Elie J. Moneuse has through his said aid and assistance, enabled this Company to effect a composition in bankruptcy with its creditors and

Now, therefore, be it resolved:

That the Directors of this Company be, and they hereby are authorized, empowered and requested to have this Company, the Copper Belle Mining Company, of West Virginia, sell, assign, trans-

for and set over to the said Copper Belle Mining Company of Arizona, all the right title and interest of this Company, the Copper Belle Mining Company of West Virginia, in and to the said mining claim, the "Oak Grove", the "Catherine A", the "Charleston", the "Independence", the "Copper Belle", the "Elizabeth", the "Durand", the "Dandy", the "Empire" and the "Ace" situated in Cochise County, Arizona, and all of the right, title and interest and good will of this Company, the Copper Belle Mining Company of West Virginia, in and to any and all property and assets of every kind and description whatever, to it belonging and situated in the Territory of Arizona, and in and to the mortgage of the San Rosso Copper Mining Company for $6,000, which is above referred to; it being however especially understood and agreed that the said sale, transfer and assignment shall be upon and subject to the following terms and conditions:

129 First. The mining claims which are above enumerated shall be conveyed to the said Copper Belle Mining Company of Arizona, subject to the mortgage to Martin Costello for $15,166. and to John Gleason for $53,000. which are above referred to.

Second. The said "Copper Belle Mining Company of Arizona" shall assume and discharge the indebtedness of this Company to Elie J. Monceau which is above referred to.

Phoenix, Oct. 9th, '11. Approved and allowed.

EDWARD KENT,
Chief Justice of the Supreme Court of Arizona.

And on to-wit: the twenty-eighth day of October, 1911, came the appellants by their attorneys, and filed in the clerk's office of said court in said entitled cause their certain Petition for, and Allowance of, Appeal, in words and figures following, to-wit

130 In the Supreme Court of the Territory of Arizona.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY of Arizona, Defendant and Appellee.

The above named appellants consider themselves aggrieved by the final judgment and decree entered on the 27th day of March, 1911, in the above court, in the above entitled proceedings, wherein the judgment of the District Court in and for the County of Graham, in the Territory of Arizona, in favor of the defendant and appellee herein is sustained and affirmed, doth hereby appeal from said judgment of the said Supreme Court of the Territory of Arizona to the Supreme Court of the United States and prays that this appeal be allowed and that a citation be duly signed and issued herein and that a transcript of the record proceedings and opinion of the Supreme Court of the Territory of Arizona, and Statement of Facts

upon which said opinion and judgment is based, duly authenticated may be sent to the Supreme Court of the United States.

WALTER BENNETT,
Attorneys for Appellants.

131 And now, to-wit, on this 23 day of October, 1911, the above application having been duly presented and considered, it is hereby ordered that the appeal prayed for in the foregoing petition be allowed, and that a citation herein shall issue upon appellants filing a bond in the penal sum of One Thousand ($1,000.00) Dollars, with good and sufficient sureties as required by law, to be approved by the Chief Justice or any Associate Justice of the Supreme Court of the Territory of Arizona.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

And on the same day, to-wit: the twenty-eighth day of October, 1911, came the appellants by their attorneys, and filed in the clerk's office of said court in said entitled cause their certain Assignment of Errors in words and figures following, to-wit:

132 In the Supreme Court of the Territory of Arizona.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY of Arizona, Defendant and Appellee.

Assignment of Errors.

Now comes the above named appellants by Walter Bennett their attorney and say, that in the record and proceedings in the above entitled cause in the Supreme Court of the Territory of Arizona, there is manifest error in this, to-wit:

I.

That said Supreme Court of the Territory of Arizona erred in not reversing the order and judgment of the trial court setting aside its judgment in favor of the plaintiffs and appellants in said cause and in thereafter rendering judgment for the defendant and appellee in said cause.

II.

The Supreme Court of the Territory of Arizona erred in holding that the answer to the plaintiffs' complaint, contained in the intervening petition of James B. Riley, constituted a defense to this action.

III.

The Supreme Court of the Territory of Arizona erred in holding that the money advanced and supplied by Elie J. Moneuse
133 under the terms of the contract, a copy of which is attached to the answer contained in the intervening petition of J. B. Riley, as Exhibit "A" thereof, was not a loan to the Copper Belle Mining Company to be repaid by it.

IV.

The Supreme Court of the Territory of Arizona erred in holding that there was no consideration for the promissory note sued on in this case.

V.

The Supreme Court of the Territory of Arizona erred in not reversing the action of the trial court in entering judgment for the defendant in this action.

Wherefore, appellant prays that the judgment and decision of the Supreme Court of the Territory of Arizona in this cause be reversed, annulled and held for naught; that appellant recover his costs herein, and for such other orders in the premises as may be just.

WALTER BENNETT,
Attorneys for Appellants.

And on the same day, to-wit: the twenty-eighth day of October, 1911, came the appellants and filed in the clerk's office of said court in said entitled cause their certain Bond on appeal in words and figures following, to-wit:

134 In the Supreme Court of the Territory of Arizona.

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY of Arizona, Defendant and Appellee.

Appeal Bond.

Know all men by these presents: That we, William A. Paine, Herbert I. Foster, Thomas S. Dee and Leonard D. Draper, Co-partners doing business under the name and style of Paine, Webber and Company, as principals and the American Surety Comapny of New York, a corporation, as surety, are held and firmly bound unto the Copper Belle Mining Company of Arizona, its successors and assigns

in the sum of One Thousand (1,000.00) Dollars, lawful money of the United States, to be paid to the said Copper Belle Mining Company of Arizona, its successors and assigns, to which payment, well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Dated this 23rd day of October, 1911.

The condition of the above obligation is such that

Whereas, the above named appellants have appealed to the Supreme Court of the United States from the final judgment rendered by the above named court in the above entitled action,

135 and the said above named appellants have obtained an allowance of their appeal to the Supreme Court of the United States and the citation directed to the above named appellee is about to be issued, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington, D. C.

Now, the condition of the above obligation is such, that if the said appellants shall prosecute said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

WILLIAM A. PAINE,
THOMAS S. DEE,
HERBERT I. FOSTER,
LEONARD D. DRAPER,
AMERICAN SURETY COMPANY
OF NEW YORK,

[SEAL.]

By W. K. JAMES,
Resident Vice President.

Attest:
C. F. AINSWORTH,
Resident Assistant Sec'y.

The above and foregoing bond is hereby approved both as to form and sufficiency of sureties this 28th day of October, 1911.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

136 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true and complete copy and transcript of the Record in a certain cause lately pending in said court, No. 1149, wherein William A. Paine, Herbert I. Foster, Thomas S. Dee and Leonard D. Draper, co-partners doing business under the name and style of Paine, Webber & Company, were Appellants, and Copper Belle Mining Company of Arizona, was Appellee, including the Complaint, Summons,

Petition for Intervention, Default, Judgment, Motion to set aside and vacate judgment, Affidavit, Resistance of Motion, Amended Answer, Judgment, Motion for New Trial, Plaintiffs' Exhibit "A", Opinion, Judgment, Motion for Rehearing, Statement of Facts, Petition for and Allowance of Appeal, Assignment of Errors, Bond on Appeal, and all minute entries had and entered of record, as the same remain on file and of record in my office.

And I further certify that the same constitute the record in said cause.

And I further certify that the attached Citation is the original issued by said Supreme Court.

In witness whereof, I have hereunto set my hand and the seal of said Court, this 19" day of Jany. A. D., 1912 at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk, Supreme Court of Arizona.

137 In the Supreme Court of the United States.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY of Arizona, Defendant and Appellee.

The United States of America to the Copper Belle Mining Company of Arizona:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the Supreme Court of the Territory of Arizona, wherein William A. Paine, Herbert I. Porter, Thomas S. Dee and Leonard D. Draper, Co-partners doing business under the name and style of Paine, Webber & Company are appellants and you are appellee to show cause, if any there be, why the judgment in said cause rendered in favor of said appellee and against the appellants as in said appeal mentioned, should not be set aside, reversed and corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 28th day of
138 October, 1911.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

Service of the within citation is hereby accepted and admitted, and receipt of a copy thereof admitted this 30th day of October, 1911.

JOHN B. WRIGHT,
Attorney for Defendant and Appellee.

139 [Endorsed:] No. 1149. Territory of Arizona. Supreme Court. William A. Paine, et al., doing business under the name and style of Paine, Webber and Company, Plaintiffs and Appellants, vs. Copper Belle Mining Company of Arizona, Defendant and Appellee. Citation. Filed Nov. 2, 1911. F. A. Tritle, Jr., Clerk.

140 In the Supreme Court of the United States.

WILLIAM A. PAINE, HERBERT I. PORTER, THOMAS S. DEE, and Leonard D. Draper, Co-partners Doing Business under the Name and Style of Paine, Webber and Company, Plaintiffs and Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA, Appellee.

Order Enlarging Time for Docketing and Filing Record in the Supreme Court of the United States.

The above named appellants having appealed to the Supreme Court of the United States from the judgment of the Supreme Court of the Territory of Arizona, and good cause having been shown why the time within which the case may be docketed and the record filed with the Clerk of the Supreme Court of the United States should be enlarged, it is hereby

Ordered that the time within which the case may be docketed and the record filed with the Clerk of the Supreme Court of the United States, be and the same is hereby enlarged until and including the 27th day of January, 1912, and the return day of the Citation heretofore filed and served upon such appeal is hereby enlarged and extended until said last named day.

Dated December 27th, 1911.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

141 [Endorsed:] No. 1149. In the Supreme Court of the Territory of Arizona. Filed Dec. 27, 1911. F. A. Tritle, Jr., Clerk. [Endorsed:] No. —. In the Supreme Court of the United States. William A. Paine, et al., Appellants, vs. Copper Belle Mining Company of Arizona, Appellee. Order enlarging time for Docketing and Filing Record. Filed —. —— ——, Clerk.

Endorsed on cover: File No. 23,041. Arizona Territory Supreme Court. Term No. 181. William A. Paine, Herbert I. Foster, Thomas S. Dee, and Leonard D. Draper, copartners doing business under the name and style of Paine, Webber & Company, appellants, vs. Copper Belle Mining Company of Arizona. File No. 23,041. Filed February 3, 1912.

IN THE SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM 1913.

No. 181.

William A. Paine, Herbert L. Foster, Thomas L. Dee and Leonard D. Draper, Co-partners Doing Business Under the Name and Style of Paine, Webber & Company,
Plaintiffs and Appellants,.

vs.

Copper Belle Mining Company of Arizona,
Defendant and Appellee.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an action on a demand promissory note given by the defendant to Duparquet, Huot & Moneuse Co., for $265,-416.72 by the Copper Belle Mining Company of Arizona in settlement of a claim against the Copper Belle Mining Company held by Elie J. Moneuse and by him assigned to the payees of the note.

Action was brought on the note and personal service had upon the Copper Belle Mining Company, the defendant in the action. No answer or defense was made by the corporation. Before the time for answer had expired, however, a petition for leave to intervene was filed by the Intervenor James B. Riley, on behalf of himself and Geo. E. Crawford, the secretary of the company, alleging himself and Mr.

Crawford to be stockholders of the corporation, and that the note sued on was without consideration and that the directors of the defendant company were fradulently refusing to defend the action. On December 30th, 1907, default was entered against the defendant company. On January 4th, 1908, before judgment was entered on the default, the petition of Riley for leave to intervene was heard by the Court, both plaintiff and Riley,, intervenor, being represented by counsel and upon such hearing the petition for leave to intervene was denied and judgment was entered for the plaintiff for the amount of the note and interest. (Folios 54-55).

No motion for new trial was made by the defendant or the intervenor, but on February 4th, 1908—just 30 days after the entry of judgment for plaintiff, the intervenor—Riley, on behalf of himself and Mr. Geo. Crawford—filed a motion to set aside the judgment and grant a new trial of the action and allow him to intervene and defend for the defendant corporation, and against the protests of the plaintiff this motion was allowed, the judgment was set aside by the Court and Mr. Riley allowed to intervene. By the evidence in the case the following facts were made to appear and are more fully set forth in the statement of facts found by the Supreme Court of the Territory of Arizona.

That on and prior to June 4th, 1903, the Copper Belle Mining Company was a West Virginia corporation with a capital stock of $1,000,000. divided into 200,000 shares of the par value of $5.00 each, owning and attempting to operate some mining property in Cochise County, Arizona, which operations had been so disastrous that the company had become completely insolvent and had been adjudged a bankrupt by the United States District Court, for the District of Arizona, and its assets were in the hands of a receiver of that court and were about to be sold and the proceeds distributed among its creditors. (Folio 39). The Company had no means of paying its debts which then amounted to about $45,000.00, exclusive of certain mortgage indebtedness then in litigation. (Folios 38 and 40).

At this time one Elie J. Monense who was then a small

stockholder in the company, was engaged in litigation against the intervenors, Riley and Crawford, and Balthasar Brunner and J. Adam Brunner, who were the majority stockholders in the company, and had been in control of its management, to compel the return to the treasury of the company of about 85,000 shares of its capital stock, alleged to have been illegally issued to them, and for an accounting of the administration of the affairs of the company by them. (Folio 38.)

In this situation in order to settle the litigation and to save the company from the loss of its property, Mr. Moneuse entered into a contract with the intervenors, Riley and Crawford, and to which contract the Brunners above mentioned were parties, the provisions of which, briefly stated, are as follows:

1st. That the said majority stockholders should return to the treasury of the company, which was then empty, a sufficient amount of stock—the rightful ownership of which was then in dispute and in litigation—so that at least 50 per cent of the capital stock of the company should be in the treasury.

2nd. That the majority of the board of directors should resign and their places be supplied by nominees of Moneuse, who should also name the President and Treasurer.

3rd. That 50 per cent of the stock of the company should thereupon be issued and delivered to Mr. Moneuse.

4th. That thereupon Moneuse should *provide and supply* sufficient money to pay off the debts of the company (amount then not ascertained) and apply the money so provided and supplied to the payment of those debts, and *provide* and *supply* sufficient funds to enable the company to operate its mines for three years, and also to secure dismissal of the bankruptcy proceedings and to restore to the company the title and possession of its mining property.

In the sixth paragraph of this contract it is provided specifically that the 50 per cent of the stock of the company is to be issued and delivered to Moneuse in consideration of the *advance* by him to the company of the moneys above

mentioned. A copy of this contract is attached to the intervenor's petition as Exhibit "A." (Folios 38-51).

The evidence shows that this contract was carried out and that under it Mr. Moneuse *advanced* to the company a sum exceeding $265,416.22, for which the note in controversy was given, and that these advances constitute the consideration of the note sued on. (Folio 3).

After the execution of this contract and its performance by Moneuse, the Copper Belle Mining Company of West Virginia was re-organized into the Copper Belle Mining Co., of Arizona, a corporation organized under the laws of the Territory of Arizona. All of the property of the old company was transferred to the new company, and the stock of the new company was issued to the stockholders of the old company to the amount of stock in the old company held by each, and the Supreme Court of Arizona finds that the relation of the parties were not at all changed by such reorganization. (Folio 13).

The Supreme Court of the Territory of Arizona held that the advance of the money represented by the note sued on created no obligation on the part of the company to repay the money so advanced, and affirmed the judgment of the trial court for the defendant company.

As the questions regarding the power of the trial court to set aside the judgment for plaintiff and permit the filing of the petition in intervention are matters involving only the construction of local statutes and practice thereunder, we confine ourselves to the following:

ASSIGNMENT OF ERRORS.

I.

The Court erred in holding the legal effect of the contract attached to the intervenor's petition as exhibit 'A" thereof, to be that the advancement by Elie J. Moneuse to the Copper Belle Mining Company of the money necessary to pay its debts; to release it from adjudication of Bank-

ruptcy already had against it; to restore to it the title and possession of its property and to prosecute the development and operation of its mines for three years, created no obligation on the part of the company to repay such advances.

II.

The Court erred in holding the note sued on to have been executed without consideration.

III.

The Court erred in entering judgment for the defendant.

BRIEF AND ARGUMENT.

The controversy between the plaintiff and the intervenor is whether the contract construed in the light of all the surrounding facts and conditions existing at the time it was entered into, created the relation of debtor and creditor between the Copper Belle Mining Co., and Mr. Moneuse for the money "provided," "supplied," and "advanced" to it, or whether the money so "advanced, provided and supplied" was the purchase price of the stock issued to him.

We think the rule to be that the controlling words of the contract are to be construed according to their ordinary acceptation unless it is shown *clearly and convincingly,* by the surrounding facts and circumstances that the parties to the contract did not intend them to be so construed. In case there be any reasonable doubt in the mind of the Court that doubt is to be resolved in favor of construing the words according to their ordinary acceptation.

The Court, of course, must determine from the contract itself what its legal effect is. It cannot be added to, or subtracted from, or changed, or explained by any oral testimony. The only purpose of the oral testimony introduced by the intervenor is to acquaint the Court with the surround-

ing facts and the situation of the parties at the time the contract was entered into in order to discover, if possible, the mutual attitude of the contracting parties in regard to the subject matter of the contract.

The surrounding facts are in the main recited in the contract and are not much illuminated by the oral testimony in the case, as epitomized in the statement of facts made by the Territorial Court. But so far as light is thus thrown upon them they certainly seem to support our contention that the controlling words of the contract are to be taken in their ordinary acceptation, and as understood by Mr. Moncuse.

From the terms of the contract we think the following facts are either directly stated or fairly to be inferred:

That at the time the contract was entered into the corporation owned or had owned some mining property in Arizona believed to be valuable if properly managed and worked.

That its capital stock was divided into 200,000 shares of the par value of $5.00 per share.

That the majority of this stock stood on the books of the company in the names of Riley, Crawford and the Brunners, the first and second parties to the contract, and that the legality of the issue of at least 85,000 shares of this stock to them was then being litigated by Mr. Moncuse in the Supreme Court of New York.

That Riley, Crawford and the Brunners through the ownership or control of the majority of the stock of the corporation had been in absolute control of the corporation.

That under their administration the company had contracted debts exceeding $45,000, besides mortgages to Gleason and Costello of $85,000 (since foreclosed), and the company had been declared bankrupt by the District Court of Cochise County; its property taken from it and was in the hands of the Trustee in Bankruptcy and was about to be sold at auction and the proceeds distributed to its creditors. The business of the company had been so conducted as to

leave it hopelessly insolvent and without means to pay its debts, and its stock was consequently without value. (Folios 19-20 and 38-39).

In this situation, the stock of these majority stockholders, whether honestly or dishonestly acquired, was worthless, and not worth further litigation over. Monsma was a small stockholder, holding only 1,000 shares, but he had money and had faith in the value of the company's property if it could be redeemed and properly managed, and by the contract in evidence he agreed that if these majority stockholders would turn over to him by means of surrender to the company and re-issue to him, so much of their holdings of stock as would amount to 50 per cent of the stock of the company, and place him in the complete control of the company by the election of directors and officers of his choice, he would "advance" (loan) to the company sufficient money to pay its debts, restore its property to it and pay its operating expenses for three years, believing that in that time he could place it on a paying basis.

It seems to us that from a consideration of these surrounding facts, drawn from the contract itself, we are forced to the conclusion that the money "advanced" by Monsma was a loan to the company and not the purchase price of the stock.

It will be noted that the terms "purchase," "buy" or "sell" nowhere appear in the contract, and that each of the three items which Mr. Monsma was to advance sufficient money for was an indeterminate amount. It was not known exactly what the debts of the company were. It was not known what money would be required to discharge the bankruptcy proceedings and restore to the company its property; it was not known and could not be known what money would be required to operate the company and work the mines for three years or until the property could be made to pay its own operating expenses.

It is not unusual to place no exact limit upon the amount of future advances or loans to be made, because repayment being contemplated, the amount advanced within reasonable

limits is not material. But it is unthinkable that a purchase of property should be made and the purchase price remain an unascertained amount.

In view of the situation we think the sixth clause of the contract, definitely and in apt words, states in terms the consideration for the issue and delivery of the 50 per cent of the stock to Moneuse. This clause states distinctly that the only consideration for the issue and delivery of the stock is the "advance" of the money necessary for the purposes above mentioned. Not the money itself, but its "advancement"—the loan of it—to be deducted of course from the future revenues of the company. A loan of money is a sufficient consideration for a transfer of property in addition to the obligation to repay the debt. This, we think, will not be disputed. And in this case the consideration for the transfer is distinctly stated to be the "advance" of the money, not the money itself.

It is not strange that there is nothing in the contract that provides for the time and manner of repayment. By the terms of the contract the money was advanced to the *company*. The money to repay the advances must come out of the company. The obligation to repay arose upon the "advancements" being made, but actual repayment could not be made by the Company until Moneuse by his management of the affairs of the Company could provide the means of repayment from the company's revenues, and that time was uncertain.

We think the conclusion is forced that the 50 per cent of the stock was a stock bonus to be given to Mr. Moneuse by the majority stockholders to induce him to finance the company, then hopelessly insolvent, and stock provided for the purpose of that bonus was contributed by the majority stockholders who were themselves unable or unwilling to finance the company and lift it out of its hopelessly insolvent condition. Such arrangement is neither inequitable nor unusual. But it would have been most inequitable and unusual and utter folly for Mr. Moneuse to contract to pay for the worthless stock of a bankrupt and insolvent com-

pany an amount of money which, though uncertain, must necessarily be very large, and which, in fact, has amounted over and above any amounts received by him from the company, to more than 60 per cent of the par value of the stock to be transferred to him under the terms of the contract.

There are some facts brought out in the evidence and found by the Arizona Court which we think throw light upon the question under consideration and which we think illustrate the construction placed upon this contract by the parties to it and the stockholders of the company, at or about the time of its execution.

At the annual stockholders meeting of the company in the years 1905, 1906 and 1907, Mr. Moneuse rendered itemized reports in writing of his disbursements on behalf of the company, and of the amounts that he had received from the company which he had credited against such disbursements. (Folio 113).

It may be fairly assumed, we think, that these disbursements were in payment of the debt of the company; in releasing the company from the adjudication in bankruptcy against it, and restoring to it the title and possession of its property, and in paying the expenses of the operation of its mining property under the terms of the contract.

Such reports, we think, are inconsistent with the idea that such advances were a *payment* for the 99,002 shares of stock turned over to him by the intervenors through the medium of the company. Particularly as these reports, to which there does not appear to have been any objection, show that Mr. Moneuse had repaid himself for such advances out of the revenues of the company to the amount of $109,-897.10. If these advances were not understood to be in the nature of loans, Mr. Moneuse would not have been allowed without protest, to repay himself for such advances, even in part, out of the revenues of the company; but no objection to such repayment as shown by these reports was made by the stockholders at any of their meetings. (Folio 113).

On February 29th, 1904, a special stockholders meeting

of the company was held at which a resolution was passed which among other things provided:

> "The said Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of this company to Elie J. Moneuse which is above referred to."

The reference above quoted was to a preamble to the resolution reciting the fact that Moneuse had loaned and advanced money to the company. (Folio 114).

At the regular stockholders meeting of the company held on the 9th day of May, 1904, this preamble was withdrawn and the resolution rescinded. This was done at the suggestion of Mr. Moneuse, who voted his stock in favor of such rescission.(Folio 114). The reasons given by Mr. Moneuse for this action, though not contained in the statement of facts, are set forth in the opinion of the court. (Folio 91). These reasons in substance were that it was suggested by some of the stockholders, that as less than one year had elapsed since the making of the contract it could not be then known that Mr. Moneuse would fulfill his contract to advance all the money necessary to operate the company's property for three years, and unless he did so there would be no obligation on the part of the company to repay any of his advances. When this was pointed out to Mr. Moneuse he offered the motion to rescind the former resolution and voted his stock in the support of the motion to rescind.

We think it is very significant, however, that at the same stockholders meeting at which the rescinded resolution was passed the following further resolution was adopted, viz:

> "Whereas the financial condition of the Copper Belle Mining Company of West Virginia, at the time Mr. Moneuse was requested to assist the company to have its property restored to them, was a bankrupt,
>
> "BE IT RESOLVED, that the sincere thanks of this company be extended to Mr. Moneuse for his magnificent liberality in making the loan necessary to secure the discharge in bankruptcy of the said company and

securing to it, its property, giving to each stockholder in this company a chance to square? (share) with each other, whatever success may ultimately accrue to them in its operation, when no one else would entertain a proposition to in any way help this company."

This resolution was unanimously adopted. (Folio 124.)

We think it is significant that this latter resolution was the unanimous sentiment of this meeting; that Mr. Geo. E. Crawford was a stockholder of the company, and the secretary of the company and recorded the minutes over his own signature. The adoption being unanimous he must have voted in favor of it, though he now joins with Mr. Riley in the intervention in this case and asks that the advances made by Mr. Moneuse be not considered as a loan, but as payment for the 99,002 shares of stock which he with others turned over to Mr. Moneuse to induce him to make those advances.

The resolution last referred to was not rescinded by the stockholders at the time the resolution that the Arizona Company assume and pay these advances, was rescinded, or at any other time. But it still stands on the minutes of the company as the unanimous expression of the stockholders of their then understanding of the status of those advances, and this was at or near the time of the transaction.

That such was the understanding of Mr. Crawford who was a party to the contract in question, and the secretary of the company at the time the contract was entered into, is further shown by the minutes of a directors meeting of the company held subsequent to the stockholders meeting at which the resolution and preamble thereto which provided for the assumption of the debt of the West Virginia Company by the Arizona Company, was rescinded.

At the directors meeting referred to Mr. Crawford was present in his capacity as director and secretary, and the same resolution with its preamble which had been adopted and afterwards rescinded by the stockholders, was brought before the directors. The resolution was unanimously adopted, showing again that Mr. Crawford, a party to the con-

tract and who with Mr. Riley formed the party of the first part therein, (Folio 37), understood that the advances made by Mr. Moneuse to the company were loans to be repaid. (Folio 127-129).

It seems to us that Mr. Crawford is estopped to assert that the advances made by Mr. Moneuse were payment for the stock he with others turned over to Mr. Moneuse to constitute him the majority stockholder, and he and Mr. Riley are the only stockholders who sought to intervene and repudiate the obligations of the company to repay those advances.

We think the legal effect of the words used by the parties to the contract in question, is to constitute the advances to the company made by Mr. Moneuse under the contract, loans to be repaid. That by such advancements the relation of debtor and creditor was created, and that the facts found by the Territorial Court beyond those recited in the contract tend strongly to support and establish that construction.

We think the judgment of the Supreme Court of Arizona should be reversed, with instructions to enter judgment for the plaintiff for the amount due upon the note according to its terms.

Respectfully submitted,

WALTER BENNETT,

Attorney for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 181.

WILLIAM A. PAINE, HERBERT L. FOSTER, THOMAS S. DEE and LEONARD B. DEAPER, co-partners doing business under the name and style of PAINE, WEBBER & COMPANY,

Plaintiff-Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA,

Defendant,

JAMES B. RILEY,

Intervenor-Appellee.

BRIEF FOR APPELLEES.

JOHN B. WRIGHT,
Attorney for Intervenor-Appellee.

JAMES F. MACK,
of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 181.

WILLIAM A. PAINE, HERBERT I. FOSTER, THOMAS S. DEE and LEONARD D. DRAPER, co-partners doing business under the name and style of PAINE, WEBBER & COMPANY,
Plaintiff-Appellants,

vs.

COPPER BELLE MINING COMPANY OF ARIZONA,
Defendant,

JAMES B. RILEY,
Intervenor-Appellee.

APPEAL FROM THE SUPREME COURT OF ARIZONA.

BRIEF FOR APPELLEES.

Statement of Facts.

The proposed case on appeal in this case was never submitted for settlement to the attorney of record for appellees, John B. Wright, Esq., of Tuc-

son, Arizona, who was served with the citation of appeal to this Court (fol. 138), and the record is so hopelessly involved as to be almost unintelligible. The evidence and documents of appellees before the Trial Court (fols. 64, 65), are nowhere incorporated in this record, in consequence of which the writer finds great difficulty in preparing this brief. The case involves the interpretation of a written contract (fols. 37-47) upon which the note in suit in this case is based and the absence of the evidence and documents admitted in evidence before the Trial Court, which evidence and documents were contemporary with the contract itself as well as the written opinion of the Trial Court, in rendering judgment for defendant, makes it impossible to view the case with the same enlightenment of the lower Courts.

All the evidence before the Trial Court, as well as documents and exhibits, which were contemporaneous with the transaction and contract, Exhibit A (fol. 37), were in the record before the Appellate Court of Arizona, whose decision this Court is now asked to review. Being improperly left out of the record before this Court, how can this Court know what the Trial Court or the Appellate Court below based their decision upon? The record before this Court consists of sixty-eight pages, while the record upon which the Appellate Court below based its decision consisted of 277 pages.

On and prior to the 4th day of June, 1903, the Copper Belle Mining Company was a corporation organized and existing under the laws of West Virginia, and capitalized at $1,000,000, divided into 200,000 shares of the par value of $5.00 per share (fol. 37), and became financially involved in

the Territory of Arizona, where it owned and had theretofore operated certain valuable mines and mining claims (fol. 39) and where certain liens, claims and judgments had been filed against it in the sum of about $45,000, and was adjudged a bankrupt, and litigation was begun in the State of New York by one Elie J. Moneuse, a stockholder, against the directors, officers and the majority stockholders, involving the title to certain stock held by them in the company (fol. 38).

With this situation confronting them, five stockholders of the company, Riley, Crawford and two Brunners (fol. 48), who with certain of their friends owned the majority of the outstanding stock of the company (fol. 37), entered into a written agreement on the 4th day of June, 1903 (fols. 37-48), whereby it was agreed by and between the said majority stockholders and Elie J. Moneuse that the said Moneuse was to pay off and discharge all the just debts due or owing by said Company, procuring the bankruptcy and other legal proceedings against the Company to be dismissed and terminated and the Company to be restored to the title and possession of its property free and clear, except as to a certain mortgage made to one Gleeson and Costello (fol. 40), and the said Moneuse would discontinue certain litigation against the company and its officers, which he had begun in the State of New York (fol. 46), and that he would furnish for a period of three years sufficient money to operate the mines of the Company unless said mines should sooner yield sufficient returns to pay for their own operation (fol. 40), in consideration for which the said majority stockholders, parties of the first part and second parts to said agreement,

"Exhibit A" of the answer herein (fol. 37), who were the officers and directors of the Copper Belle Mining Company of West Virginia, were to return to the treasury of said defendant company sufficient shares of their stock as should be found by accountants, who were to examine the books of the company, to be necessary with what stock was then in the treasury of the company to make fifty per cent. of the total authorized stock of the company, which would be one hundred thousand shares (fol. 42).

The said fifty per cent. of the total authorized capital stock of the defendant company, so then in the treasury of the company, was to be issued and delivered to said Moneuse, party of the third part to said contract, as his absolute property. The board of directors and officers of the defendant company were then to resign and a stockholders meeting called and a new board of directors elected, who in turn would elect new officers. This, of course, was to give said Moneuse the management of the company, he now being the majority stockholder (fol. 43). The parties of the first and second part were to be represented on the board of directors for one year (fol. 44).

It is conceded that the majority stockholders, parties of the first and second part, carried out the terms of this contract in good faith, and Moneuse, the party of the third part, was put in control of the defendant company (fol. 112).

On the 4th day of February, 1904, a new corporation was organized by said Moneuse, known as the "Copper Belle Mining Company of Arizona," the present defendant, and on the 29th day of February, 1904, a special meeting of the stockholders

of the Copper Belle Mining Company of West Virginia was called; and it was proposed at that meeting to turn over the entire assets of the said West Virginia corporation to the said Copper Belle Mining Company of Arizona, and a resolution for that purpose was drawn at the instance of Moneuse and flashed upon the stockholders (Appellant's Exhibit A, fols. 116-119). In that resolution there was a "joker" and upon that "joker" this action by appellants is based. That "joker" was contained in paragraph marked "Second' of said Exhibit A, and will be found at folio 120, and reads as follows:

> "Second: The said 'Copper Belle Mining Company of Arizona' shall assume and discharge the indebtedness of this company (the Copper Belle Mining Company of West Virginia) to Elie J. Moneuse, which is above referred to."

The words "above referred to" refer to a recital of the resolution; said recital is paragraph "6" of the resolution at folio 117.

That was the first time that it was ever stated by Moneuse to the stockholders that the money he paid under the contract, "Exhibit A," of answer herein (fol. 37), for which he received fifty per cent., or one hundred thousand shares of the stock of the Copper Belle Mining Company of West Virginia, the predecessor company of defendant herein, was a loan or other than the absolute consideration for said stock.

The writer represented the majority of stockholders of the company as their attorney at the drawing of the agreement between themselves and

Monroe, now under consideration, and he was present at the special stockholders' meeting at which this claim of Monroe was put through the meeting, and protested against that part of the resolution which recognized the money paid by Monroe under the contract, "Exhibit A" (fol. 37), as a loan. Said resolution, however, was forced through the meeting; 124,716 shares voted for it and 28,982 shares registered against it (fol. 123). It is well to remember here that of the 124,716 shares voting at that meeting to recognize money paid by Monroe under the contract (fol. 37) as a loan to the company, for which he received fifty per cent. of its stock, 100,000 shares belonged to Monroe himself. In other words he was voting the stock he had received under the contract to relieve himself of its conditions and obligations in absolute fraud of the other stockholders. Deduct the 100,000 shares, owned and voted by Monroe, from the vote (fol. 123), and the resolution would have failed by 14,267 votes. Every word in that resolution which he put through at that meeting (fol. 116), recognizing the money he paid in behalf of the company as a loan and lending him, was of his own manufacture as well as the minutes of that meeting; for in the face of his majority stockholding in the company, the stockholders were at his mercy. It took a legal mind to discern the meaning of the long rambling resolution that was flashed upon the stockholders at that meeting by a quick reading; but that legal mind was there and understood its significance and entered his protest and explained it to your men and women who were there as stockholders with their all invested and who, when they understood it, say

Returned & exts of Certs [illegible] shares against an pd. payble & found as was ever attempted.

So much for the special stockholders' meeting of February 25, 1903, of which the foregoing is a brief presentation of the facts as they transpired there.

Now, the next meeting of the stockholders was at the regular annual stockholders' meeting, two months later, May 2, 1904 (Tr. 125). At that meeting a resolution was passed by the Western Interests that is complete control of the company, in which we find the following (Tr. 125, 126):

> "Whereas, the Copper Belle Mining Company of West Virginia held a special meeting of its stockholders at Temple Bar, in the Borough of Manhattan, City of New York, on the 25th day of February, 1903 (Tr. 125), at which meeting two resolutions were passed, and
>
> Whereas, it is deemed expedient by the Board of Directors, owing to a misunderstanding on the part of some of the stockholders of the Copper Belle Mining Company, that a certain part of resolution No. 1 (Tr. 126) should be withdrawn and rescinded.
>
> Now, therefore, be it resolved: That paragraph 'second' (Tr. 126) of said first resolution which was duly passed and ratified by the stockholders present at said meeting, namely:
>
> 'That the said Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of this company to Eliz. F. Monroe' (Tr. 126), and including paragraph marked '6th' of the recitals of said [illegible] (Tr.

117) *is herewith withdrawn and rescinded* by the stockholders present at this meeting. The following is a copy of paragraph 'Six' of the recitals of said clause, hereinbefore referred to:

'Whereas, Elie J. Moneuse of the Borough of Manhattan, in the City of New York, has loaned and advanced to this company, the said Copper Belle Mining Company of West Virginia, certain sums of money for the purpose of compromising and discharging debts due by this company, of effecting and carrying out a composition in bankruptcy with creditors of this company, and of defraying and discharging the expenses of the proceedings wherein this company was adjudged a bankrupt, including counsel fees in such proceedings and litigation incident thereto'" (fol. 126).

So that the foregoing shows clearly that whatever pretensions Moneuse had that the money paid by him under the contract (fol. 37) out of which this action arose and for which the note in suit was alleged to be given was a loan, was by him abandoned at the annual stockholders' meeting held May 9, 1904, by the resolution above recited and for which he voted.

But let us trail the workings of the minds of these conspirators, as shown by their actions, a bit further. It is interesting, but it was rough work. They had the brains of longshoremen and the desires of a "get-rich-quick-Wallingford."

Notwithstanding, as we have seen above, that they abandoned the claim of Moneuse, that the

money paid by him, under the contract (fol. 37), was a loan at the regular stockholders' meeting held May 9, 1904, turn now to a directors' meeting held by them in their own secrecy June 30, 1904 (fol. 127), and look at folio 129, and you will find that although at the previous stockholders' meeting held May 9, 1904, they withdrew that part of the resolution of the previous stockholders' meeting recognizing the money so paid by Moneuse as a loan. The Board of Directors at said meeting held June 30, 1904, reenacted the identical clause in a resolution recognizing said money as a loan by Moneuse to the company, for paragraph "Second" of said resolution passed by the Board of Directors, sets forth, at folio 129:

> "Second: The said Copper Belle Mining Company of Arizona shall assume and discharge the indebtedness of this company to Elie J. Moneuse which is above referred to."

The foregoing recital of facts is necessary to an understanding of the issues that were involved and tried in the lower courts in this case.

The note in suit for $265,416.72 was alleged to be given by the Copper Belle Mining Company of Arizona. The consideration alleged was the money paid by Moneuse as required under the terms of the contract that he entered into on the 4th day of June, 1903, with the then majority stockholders for the control of the company, and by virtue of which he obtained 100,000 shares of the company's stock or fifty per cent. (fols. 37-49, 115).

If the present record contained the evidence and exhibits that were before the trial court and the Appellate Court of Arizona, it would show that

in 1904, shortly after getting control of the Copper Belle Mining Company, the Moneuse Board of Directors voted three of their number $10,000 a year salary each, as follows: Peter Quinn, President, salary $10,000, Elie J. Moneuse, Treasurer, salary $10,000, Henry J. Mayer, Counsel, salary $10,000, although the company was just emerging from bankruptcy. These salaries were never paid, but were accumulated during the years 1904 to 1905, 1905 to 1906, 1906 to 1907, until the said salaries amounted to $90,000 Quinn and Mayer assigned the $60,000 due them to Moneuse and the $90,000 salary above mentioned is a part of the $265,416.72 urged as due Moneuse and as consideration for the note in suit, although the note is supposed to represent what Moneuse actually paid out for the company. All this appeared in the record before the Trial and Appellate Courts below.

The appellants, in their brief, argue three assignments of error, but the second and third are embraced in the first.

Brief and Argument.

The contract between the majority stockholders and Moneuse, dated June 4, 1903 (fols. 37-49), sets forth that the Copper Belle Mining Company was in bankruptcy with an indebtedness of about $45,000. It owned mining property in Arizona, recognized by all parties to the contract as of great value (fols. 38, 39). The majority stockholders, who were then the officers of the company, entered into the agreement, "Exhibit A," attached to the answer (fol. 37), whereby it was agreed that

Moneuse was to pay off said indebtedness of about $45,000 and have said company discharged in bankruptcy and he was to discontinue certain litigation he had begun in the State of New York against the company and its affairs; and in addition he was to furnish sufficient money to operate the property for the term of three years, unless the property sooner yielded sufficient money to pay for its own operation, in consideration for which Moneuse received fifty per cent. of the company's stock, or 100,000 shares of the face value of $500,000.

But because the word "advance" appears once in the whole agreement in Article "Sixth" (fol. 43), the contention of appellant is that the money furnished by Moneuse under the agreement was a loan to the company, and the 100,000 shares, or half the stock of the company, received by Moneuse was a bonus, and he was to receive the return of the money. This is the sole contention of appellant, and it was the basis for the giving of the note in suit.

A short examination of the contract will show how preposterous is this claim.

Now, the only place the word "advance" is used is in the "Sixth" paragraph (fol. 43), and it will be noted that it is used in conjunction with the word "paid," "paid and advanced." The word "advance" was not used or intended by the parties to designate a loan as paragraph "First" (fol. 40) clearly shows, because it is set forth in said paragraph "First":

> "First: The party of the third part shall provide and supply on or before the 20th day

> of June, 1903, a sufficient sum of money to *pay off* and *discharge all the just debts due or owing by said company.*"

And, again, in the same paragraph, speaking of the money to be provided by Moneuse under the agreement:

> "and agrees to apply the said moneys to the *payment and discharge of said debts* * * * and the said company to be *restored to* the title and *possession of its property free and clear.*"

It is submitted that the foregoing language fully explains the intention of the parties and shows that the money paid by Moneuse was consideration for the stock he received and did not create the relation of creditor and debtor. The theory of a loan is incompatible with the language of the contract that Moneuse was to

> "*discharge* all the just *debts* due or owing by said company."

If it was to be a loan he would not agree to *discharge* the debts; he would have taken an assignment of them simply. And, again, in the same paragraph, "First" (fol. 40), he agrees that the company shall be

> "restored to the title and possession of its property *free and clear.*"

The appellant's theory of a loan is incompatible with the words "free and clear," for the loan

theory would not restore the company to "possession of its property *free and clear.*" It would simply be a shifting of the indebtedness from the company's creditors to Moneuse. In other words, the company would be right where it began, only a little worse, because the *contract is absolutely silent upon the all-important question of when, where, how or under what circumstances Moneuse was to receive the return of the money,* and would leave the company at his mercy, because he was in control of its affairs and could say just what he did say—that the money was due now and have his dummy president and himself issue a demand promissory note of the company for the appalling amount of $265,416.72 without respect to the company's condition. Think what a monstrosity the whole transaction of the note in suit was—here was this man, Moneuse, the treasurer of the defendant company, knowing there was not a dollar in the treasury, causing a demand note for upwards of a quarter of a million dollars, that, being a demand note was due at once, to be made and delivered by the company. The note was made according to the complaint July 22, 1907 (fol. 3), and presented for payment July 30, 1907 (fol. 4).

Moneuse, as treasurer of the company, signed the note, as did his dummy president, Quinn. Now, *while Moneuse was treasurer of the defendant company, he was also president of the Duparquet, Huot & Moneuse Co., the alleged payee of the note.* Evidence of this was contained in the record before the lower courts, but improperly omitted from this record. The whole transaction forbids the thought of honesty and Moneuse, himself, was imbued with the dishonest character of his pre-

tended claim; for did he make the note to himself? no, *he made it to a company of which he was president. Then, as president of that company, he transferred the note to the Paine, Webber Company, the appellants herein.* He tried to get as far away from that note as possible, upon the same principle that a criminal acts in getting rid of the instrument of his crime. To perfect his looting of the company, he thought an alleged innocent third party, through the instrumentality of the note, would separate him from his victims.

At the stockholders' meeting, February 29th, 1904, he first attempted to claim the money he furnished under the contract was a loan; and while he put the resolution through it was only done after 39,000 shares voted against it, paragraph "Second" (fols. 120-123). He withdrew that part of the resolution which stated the money was a loan two months later at the annual stockholders' meeting held May 9, 1904 (fol. 125, 126), and he later read a financial report at a stockholders' meeting in which he credited the company with $40,000 as the amount which he paid in discharging the bankruptcy debts and which he said should be his payment for the 100,000 shares of stock. This does not appear in the record, but it was in the record before the Courts below. See opinion of Mr. Justice Lewis of the Supreme Court of Arizona (fols. 91, 92).

But if the $40,000 he paid for discharging the company from bankruptcy as provided under the contract was not a loan, it is difficult to see how the money provided for the operation of the mine was a loan, as was observed by Justice Lewis, in the Appellate Court below (fols. 91, 92). For the

contract employed the same language as to the money to be paid for the operation of the mine as it did for the money provided to discharge the company from bankruptcy.

In conclusion, we respectfully ask the Court to read the amended answer of James B. Riley, the intervenor herein, commencing at folio 16 and ending at folio 36. And we respectfully ask the Court to further consider that the trial court, after a full examination of the evidence both oral and documentary, all of which is missing from this record, found the facts as set forth in said amended answer to be true, and entered judgment accordingly, and then the viciousness of the fraud attempted to be perpetrated upon the stockholders of the Copper Belle Mining Company is made apparent, and the wise discretion of the trial court in all its actions and rulings made manifest; as well as the judgment of affirmance of the Supreme Court of Arizona in an able opinion written by Mr. Justice Lewis (fols. 80-93), who had the full record containing all the evidence and exhibits before it, but which evidence and records the appellants improperly omitted from the record before this Court.

IT IS RESPECTFULLY SUBMITTED THE JUDGMENT APPEALED FROM SHOULD BE AFFIRMED WITH COSTS.

JOHN B. WRIGHT,
Attorney for
Intervenor and Appellees.

JAMES F. MACK,
of Counsel.

13798

PAINE v. COPPER BELLE MINING COMPANY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

No. 181. Submitted January 21, 1914.—Decided March 2, 1914.

The meaning of the arrangement between the parties having been matter for a finding and had the sanction of both courts below and the evidence not being reported, this court will not say that such finding was wrong.

13 Arizona, 406, affirmed.

THE facts are stated in the opinion.

Mr. Walter Bennett for appellant.

Mr. John B. Wright and *Mr. James F. Mack* for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action brought by the appellants upon a promissory note for $265,416.72 made by the appellee. The defence is want of consideration, and depends upon the question whether certain payments made by one Moneuse were made by way of loan or for the purchase of stock; the note having been issued as for a loan to the Company. The material facts are few. An earlier company, into the shoes of which the appellee has stepped, was in bankruptcy, and Moneuse, a stockholder, was suing certain others for the return to the Company of a large part of the stock. On June 4, 1903, a compromise was made, reciting as one ground that the Company owned mining claims which in the opinion of all the parties were of great value but which the Company was in great danger

of losing unless money was raised to work them. Moneuse agreed to 'provide and supply' enough money to 'pay off and discharge' the Company's debts and to work the Company's mines for not more than three years until they paid for working themselves. He was to get the Company out of bankruptcy and into possession of its property, subject to certain mortgages. The others were to get fifty per cent. of the authorized stock into the treasury and this amount, less what already was held by Moneuse, the Company was to issue and deliver to him 'in consideration of the advance by [him] of the moneys which are to be paid and advanced by him, as above provided for, and without further consideration whatsoever.' Moneuse also was to have control.

This agreement was carried out and the total disbursements of Moneuse were more than the amount of the note. Nine months after the compromise, a stockholder's meeting authorized a transfer of the Company's property to the appellee on the condition among others, that it should "assume and discharge the indebtedness of this Company to Elie J. Moneuse"; but on February 29, 1904, the characterization of the advance as a loan and the portion of the resolutions quoted were 'withdrawn and rescinded' at the suggestion and with the concurrence and vote of Moneuse. Afterwards on July 17, 1907, Moneuse being still in control of the Company, the note in suit was issued. The case was tried on behalf of intervening minority stockholders without a jury. The trial court found for the defendant, and the judgment was affirmed by the Supreme Court of the Territory. 13 Arizona, 406.

It cannot be said that the finding was wrong as matter of law. It is true that the agreement speaks of the money that was to be furnished by Moneuse as an 'advance' by him but it was an advance to pay off the Company's debts not merely to change the creditor. The clause that throws the clearest light upon the meaning is the recitation

that the Company's mining claims were of great value in the opinion of all the parties to the contract. That being so, it was natural that a stockholder who had the money should be willing to pay off certain debts (about $45,000), as a consideration for getting the greater part of the stock, and should be willing to work the mines for a time if he had the Company and the duration of the experiment under his control. It would seem to have been less natural for the other stockholders to part with the larger share in the rights they deemed so valuable simply as a bonus to induce Moneuse to take the former creditors' place and try his hand at the work. There are set forth in the statement some facts that we have not reproduced, because we think it unnecessary in view of the present position of the case. It is enough to say that in our opinion the appellants would not profit by a fuller consideration. The meaning of the arrangement, to which neither Company was a party, seems to have been matter for a finding. *Rankin* v. *Fidelity Insurance, Trust & Safe Deposit Co.*, 189 U. S. 242, 252, 253; *MacDonald* v. *Morrill*, 154 Massachusetts, 270, 272. The evidence is not reported, and the finding has the sanction of two courts. There is not enough before us to enable us to say that it was wrong.

Judgment affirmed.